STATE OF MICHIGAN

IN THE SUPREME COURT

CITY OF HUNTINGTON WOODS, a Michigan Municipal Corporation, and CITY OF PLEASANT RIDGE, a Michigan Municipal Corporation,

Plaintiffs/Counter-Defendants/Appellants,

v.

CITY OF OAK PARK, a Michigan Municipal Corporation, and 45th DISTRICT COURT, a Division of the State of Michigan, jointly and severally,

Defendants/Counter-Plaintiffs/Appellees

Supreme Court No. 152035

Court of Appeals No. 321414

Oakland County Circuit Court
Case No. 13-135842-CZ

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APPELLEE 45TH DISTRICT COURT'S SUPPLEMENTAL BRIEF IN OPPOSITION TO APPELLANTS HUNTINGTON WOODS' AND PLEASANT RIDGE'S APPLICATION FOR LEAVE TO APPEAL

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I. INTRODUCTION

This Court's February 3, 2016 order directing the Court Clerk to schedule oral argument on Plaintiffs/Counter-Defendants-Appellants City of Hunting Woods ("Huntington Woods") and City of Pleasant Ridge's ("Pleasant Ridge") (collectively "Appellants") application for leave to appeal posed the following questions:

> (1) whether in the absence of an agreement for joint funding of a district court in districts of the third class where the court sits in only one political subdivision, all district funding units within the district have an independent obligation to fund the court;
>
> (2) whether the parties in this case agreed that the 45th District Court would be funded entirely by the City of Oak Park; and
>
> (3) whether revenue from fees collected from building operations and retiree benefits is subject to revenue sharing under MCL 600.8379(1)(c).

Defendant/Appellee, the 45th District Court (the "45th District Court," collectively with Defendant/Appellee "Oak Park," "Appellees") will address each issue in turn. As to the Court's first question, the answer is undoubtedly "yes:" all district funding units within the district have an independent obligation to fund the court. MCL 600.8271(1) makes perfectly clear that the "governing body *of each district funding unit* shall annually appropriate, by line-item or lump sum budget, funds for the operation of the district court in that district." (emphasis added). Appellants would have this Court believe that MCL 600.8103(3) and MCL 600.8104(2) compel a different result because those statutes limit the funding responsibility to the political subdivision where the court sits. But those statutes contain express limiting language: "except as otherwise provided in this act." Because MCL 600.8271(1)'s mandate to all district funding units falls squarely within the parameters of this limiting language, all district funding units must fund the district court. In fact, this Court has previously concluded precisely that: "*Where a judicial district consists of more than one district control unit, each unit is required to contribute*

to the expenses of the court." Judges of the 74th Judicial District v County of Bay, 385 Mich 710, 726; 790 NW2d 219 (1971) (emphasis added). Appellants, in contrast, would have this Court read MCL 600.8271(1)'s mandate completely out of existence. Considering the statutory scheme as a whole, the answer to question 1 is "yes."

The answer to question 2 is categorically "no:" the parties in this case never agreed that Oak Park would be the only municipality responsible for funding the 45th District Court. In support of Appellants' assertion that a contract exists that provides for an agreement among the parties that only Oak Park would fund the 45th District Court, Appellants point to two 1974 Resolutions, one each from Huntington Woods and Pleasant Ridge, and one 1983 Resolution from Oak Park. Taken together, these resolutions fail to establish a contract between the parties. Indeed, each resolution reflects a different understanding of the parties' relationship: Pleasant Ridge's resolution suggests it is not required to fund the 45th District Court (**Ex. 1**); Huntington Woods's resolution is silent with respect to its funding obligations (**Ex. 2**); and Oak Park's resolution asks that the parties "enter into a contract" to fund the 45th District Court (**Ex. 3**). Even more telling, Appellants have submitted no documents whatsoever from Royal Oak Township or the 45th District Court.

A "valid contract requires a 'meeting of the minds' on all the essential terms.'" *Kalmanath v Mercy Memorial Hops Corp,* 194 Mich App 543, 548; 487 NW2d 499 (1992). Appellants offered no documents demonstrating that the parties agreed to anything, much less any "essential terms." Appellants' suggestion that the City of Oak Park prepared "draft resolutions" for Huntington Woods and Pleasant Ridge is simply wrong and finds no support in the record. Moreover, MCL 600.8104(3) provides that to "become effective [any] such agreement[] must be approved by resolution and adopted by the governing body of the respective

political subdivisions entering into the agreement," and that such agreement is only binding to "the extent of, and for such period stated in the agreement." Here, there is neither a funding agreement between Pleasant Ridge, Huntington Woods, Oak Park, and Royal Oak Township to fund the 45th District Court, nor are there any resolutions "adopted by" those governing bodies to satisfy the obligations in MCL 600.8104(3). In sum, neither the agreement – nor the resolutions necessary to approve a purported agreement – exist in this case.

The answer to question 3 is "no:" revenue from fees collected from building operations and retiree benefits are not subject to revenue sharing under MCL 600.8379(1)(c). The Court of Appeals appropriately held that these assessments did not constitute a "cost" under the Revised Judicature Act. Instead, they are "fees" excluded from the revenue sharing requirements of MCL 600.8379(1)(c). For these reasons, and as articulated more fully below, the 45th District Court requests that this Court deny Appellants' Application for Leave to Appeal.

II. 45TH DISTRICT COURT'S ANSWER TO QUESTION 1: 600.8271(1) REQUIRES ALL DISTRICT FUNDING UNITS IN A DISTRICT OF THE THIRD CLASS WHERE THE COURT SITS IN ONLY ONE POLITICAL SUBDIVISION TO FUND THE DISTRICT COURT, EVEN IN THE ABSENCE OF A JOINT FUNDING AGREEMENT.

Notwithstanding Appellants' suggestion that MCL 600.8104(2) provides a "general rule" to the contrary, MCL 600.8271(1) could not be clearer: the "*governing body of each district funding unit shall* annually appropriate, by line-item or lump-sum budget, funds for the operation of the district court in the district." (emphasis added). Considering the statute's unambiguous language, the Court of Appeals properly held that Appellants maintain a statutory obligation to fund the 45th District Court.

A. The Language of MCL 600.8271 Requires All District Funding Units in a District to Fund the Operations of the District Court.

Under MCL 600.8271(1), all "district funding units" must fund the operations of the district court. It is only when Appellants omit critical language from the statute do they arrive at a contrary interpretation. When considering issues of statutory interpretation, this Court has held that "provisions of a statute should be read in context." *McCahan v Brennan,* 492 Mich 730, 739; 822 NW2d 747 (2012). "Courts must give effect to every word, phrase, and clause in a statute and avoid an interpretation that renders nugatory or surplusage any part of the statute." *Hannay v Dep't of Transp,* 497 Mich 45, 57, 860 NW2 67 (2014). Furthermore, pursuant to the principle of *in pari materia, "statutes that relate to the same subject or that share a common purpose should, if possible, be read together to create a harmonious body of law." People v Mazur,* 497 Mich 302, 313; 872 NW2d 201 (2015) (emphasis added).

Michigan established "one court of justice," and Const 1963, art.6, § 1 affords the Legislature with the authority to establish courts of "limited jurisdiction:"

> Sec. 1. The judicial power of the state is vested exclusively in one court of justice which shall be divided into one supreme court, one court of appeals, one trial court of general jurisdiction known as the circuit court, one probate court, and courts of limited jurisdiction that the legislature may establish by a two-thirds vote of the members elected to and serving in each house.

Pursuant to this constitutional authority, the Michigan Legislature enacted the Revised Judicature Act of 1961, Act 236 of 1961 (the "Act"), which outlines the powers, duties, and responsibilities attendant to Michigan courts. The Act, among other things, establishes a district court:

> A district court is established in the state. The district court is not a court of record. The state is divided into judicial districts of the district court each of which is an administrative unit subject to superintending control of the supreme court. [MCL 600.8101].

On July 1, 2012, the Legislature abolished the former 45B District Court. MCL 600.8213(4). In its place, the Legislature established Appellee, 45th District Court, consisting of Appellant cities Huntington Woods and Pleasant Ridge, as well as Co-Appellee Oak Park and the township of Royal Oak:

> Beginning July 1, 2012 the forty-fifth district is created. The forth-fifth district consists of the cities of Huntington Woods, Oak Park, and Pleasant Ridge and the township of Royal Oak in the county of Oakland, and is a district of the third class, and has 2 judges. Beginning July 1, 2012 the forty-fifth-b district is abolished and the judges of the forth-fifth b district shall become judges of the forty-fifth district for the balance of the term to which they were elected or appointed. [MCL 600.8213(4)].

In districts of the third class, the court "shall sit at each city having a population of 3,250 or more and within each township having a population of 12,000 or more and at other places the judges of the district determine." MCL 600.8251(4). The "court is not required to sit in any political subdivision if the governing body of that subdivision by resolution and the court agree that the court shall not sit in the political subdivision." *Id.* In defining a "district of the third class," and articulating which "political subdivisions" are ultimately responsible for funding the relevant district court, MCL 600.8103(3) conspicuously requires the consideration of provisions "otherwise provided in the act:"

> A district of the third class is a district consisting of 1 or more political subdivisions within a county in which each political subdivision is responsible for maintaining, financing and operating the district court within its respective political subdivision *except as otherwise provided in this act*. [(emphasis added)].

MCL 600.8104(1)(b) defines a "district funding unit" or "district control unit" to mean the "city or township in districts of the third class except as provided in subdivision (c)." And, like MCL 600.8103(3), when describing which "district funding units" or "district control units" are

responsible for funding the district court, MCL 600.8104(2) expressly contemplates provisions "otherwise provided in this act:"

> *Except as otherwise provided in this act,* a district funding unit shall be responsible for maintaining, financing, and operating the court only within its political subdivision. In district courts of the third class a political subdivision shall not be responsible for the expenses of maintaining, financing, or operating the district court, traffic bureau, or small claims division incurred in in any other political subdivision *except as provided by section 8621 and other provisions of this act*. [emphasis added].

The Legislature's reason for including the "except as otherwise provided" language is clear – it did not wish to limit the scope of "district funding units" to the four corners of MCL 600.8103(3) and MCL 600.8104(2). Although Appellants would have this Court end its analysis there, the unambiguous language of MCL 600.8103(3) and MCL 600.8104(2) *requires* the Court to consider provisions beyond these statutes.

MCL 600.8271(1) is a provision, "otherwise provided in this act," that speaks to a district funding unit's obligation to fund the district court. MCL 600.8104(2). And, critically, MCL 600.8271(1) requires "each district funding unit" in a district to appropriate funds for the operation of the Court:

> *The governing body of each district funding unit shall annually appropriate, by line-item or lump-sum budget, funds for the operation of the district court in that district*. However, before a governing body of a district funding unit may appropriate a lump-sum budget, the chief judge of the judicial district shall submit to the governing body of the district funding unit a budget request in line-item form with appropriate detail. A court that receives a line-item budget shall not exceed a line-item appropriation or transfer funds between line items without the prior approval of the governing body. A court that receives a lump-sum budget shall not exceed that budget without the prior approval of the governing body. [emphasis added].

Unlike MCL 600.8103(3) and MCL 600.8104(2), MCL 600.8271(1) contains no qualifying language which demands that courts interpreting the statute look to provisions "otherwise

provided in the act." Rather, MCL 600.8271(1)'s mandate is conclusive: "*each district funding unit shall annually appropriate . . . funds for the operation of the Court.*" (emphasis added).

MCR 8.201 compliments MCL 600.8271(1) by providing the formula through which district courts calculate each funding units' proportional share of costs:

> (the number of cases entered and commenced in each political subdivision divided by the total number of cases entered and commenced in each political subdivision divided by the total number of cases entered and commenced in the district) multiplied by the total cost of maintaining, financing, and operating the district court. [MCR 8.201(A)(3)].

The Michigan Constitution specifically authorizes the Court to promulgate MCR 8.201. See Const 1963, art.6, § 5 ("[t]he supreme court shall by general rules establish, modify, amend, and simplify the practice and procedures in all courts of the state"); see also MCL 600.223(2)(k) (allowing the Court to issue rules concerning matters within "its discretion"). No further statutory authorization is required. MCR 8.201's formula, coupled with the express declaration in MCL 600.8271(1) that district funding units "shall" appropriate funding, lead to the inescapable, logical, and intended conclusion that all funding units in districts of the third class have an obligation to fund the district court.

Appellants urge the Court to consider MCL 600.8104(2) in an effort to avoid their funding obligations. But as noted above, MCL 600.8104(2) specifically refers to (1) MCL 600.8621 and (2) provisions "otherwise provided in the Act" – neither of which supports Appellants' argument that "district funding units" may side step their obligations to fund district courts.

Indeed, in describing which entities should pay for court transcription services, MCL 600.8621(1) supports the conclusion that the Legislature intended for "each" "district control unit" or "district funding unit" to contribute to the operations of the district court:

> District court recorders and reporters *shall be paid by each district control unit*. In districts consisting of more than 1 district control unit, each district control unit shall contribute to the salary in the same proportion as the number of cases entered and commenced in the district control unit bears to the number of cases entered and commenced in the district, as determined by the judges of the district court under rules prescribed by the supreme court. [emphasis added].

Requiring "each district control unit" to contribute to court transcription services further demonstrates the Legislature's intent that all municipalities within a district contribute to the district court's operations – not simply the "political subdivision" where the court sits.

But even more compelling is MCL 600.8104(2)'s request to look at provisions "otherwise provided in the Act," which necessarily implicates MCL 600.8271(1)'s binding language noting that the "governing body of each district funding unit *shall* annually appropriate . . . funds for the district court." (emphasis added). This Court has repeatedly held that the term "shall" signals a "mandatory directive." See *People v Lockridge,* 498 Mich 358, 387; 870 NW2d 502 (2015) ("[a]s we have stated many times, 'shall indicates a mandatory directive'"); *Fradco v Treasury,* 495 Mich 104, 113; 845 NW2d 81 (2014) (noting that the "Legislature's use of the word 'shall' . . . indicates a mandatory and imperative directive"). Thus, under MCL 600.8271(1), Appellants are left with no choice – they must "appropriate funds for the operation of the [45th District Court]." The Court of Appeals correctly held that by "using the term, 'shall,' instead of the permissive term, 'may,' MCL 600.8271(1) *clearly requires each district funding unit to provide funding for the district court.*" *Id. Huntington Woods v Oak Park,* 311 Mich App 96; 874 NW2d 214 (2015) (emphasis added).

Appellants ask this Court to ignore the qualifying language in MCL 600.8104(2) and hold that a "district funding unit shall be responsible for maintaining, financing, and operating the court only within its political subdivision." But to do so would require this Court to "render

nugatory or surplusage" the phrase immediately preceding that statement: "[e]xcept as provided in this act." *Hannay,* 497 Mich at 57; MCL 600.8104(2). Such a reading would also, to borrow a term from Appellants, "obliterate" the requirements of MCL 600.8271(1). Appellants' attempt to consider MCL 600.8104(2) in a vacuum completely contravenes this Court's mandate to give "effect to every word, phrase, and clause in a statute." *Hannay,* 497 Mich at 57. And adhering to the principle of *in pari materia,* MCL 600.8217(1) and MCL 600.8104(2) undoubtedly "relate to the same subject" and share the "same common purpose," and, as such, "should be "read together to create a harmonious body of law." 497 Mich at 302. "Reading these provisions of the Revised Judicature Act together, in keeping with the doctrine of *in pari materia,*" the Court of Appeals correctly concluded that the "the statutory scheme *clearly imposes on all district funding units in a third-class district a duty to provide financial support for the district court, regardless of the political subdivision in which the court is seated." Id. Huntington Woods,* 311 Mich App 114 (emphasis added).

B. Precedent Interpreting the Revised Judicature Act Supports the Conclusion That All Political Subdivisions in Districts of the Third Class Have an Obligation to Fund the District Court.

1. This Court has previously answered question 1 in the affirmative, observing that in judicial districts with more than one funding unit, each funding unit is required to contribute to the expenses of the court.

Precedent from this Court and the Michigan Court of Appeals supports the conclusion that all political subdivisions in districts of the third class have an obligation to fund the district court. In fact, this Court conclusively answered Question 1 in the affirmative in *Judges of the 74th Judicial District v County of Bay,* 385 Mich 710, 726; 790 NW2d 219 (1971), where it specifically noted "[w]here a judicial district consists of more than one district control unit, each unit is required to contribute to the expenses of the court." There, the plaintiffs were duly elected

judges of the 74th Judicial District, a first class district in Bay County. The defendant county entered into a collective bargaining agreement with a defendant union. The union filed an unfair labor practice charge against the plaintiff, alleging that the presiding judge of the 74th Judicial District instructed his secretary not to join the union. The county commissioners passed a resolution purporting to set the salaries of the court employees and requiring the court employees to join the union. The 74th Judicial District filed a complaint seeking a declaratory judgment arguing that the "court's employees were not county employees, and were not covered by the collective bargaining agreement." *Id.* at 719. The circuit court granted the declaratory relief, noting that the 74th Judicial District has the "inherent and statutory right, in order to carry out the duties of the Court in the administration of justice, to hire, fire, and direct and control its personnel . . . ." *Id.* at 721.

This Court affirmed. *Id.* at 728. In so holding, this Court rejected the defendant county's argument that the Legislature "contemplated a system whereby the Boards of Commissioners would be establishing maximum salaries for individual employees." *Id.* at 726. The Court found that this "argument ha[d] a hollow ring," noting that if the "collective bargaining agreement determines the minimum and the appropriation determines the maximum, what remains of the judges' statutory power to 'fix compensation'"? *Id.* at 726-727.

In its analysis, the Court discussed the funding obligations of district funding units or district control units to district courts. Indeed, "[i]t must be borne in mind that some judicial districts consist of more than one county, and some consist of more than one political subdivision within a county." *Id.* at 726. Critical to this case, the Court explicitly declared that "*[w]here a judicial district consists of more than one district control unit, each unit is required to contribute to the expenses of the court.*" *Id.* (emphasis added). "Obviously," the Court held, in such

districts "no single control unit could limit salaries by line item appropriation." *Id.* The Court concluded by noting that its decision was "not only consistent with the manifest legislative intent but wholly consonant with the constitutionally prescribed functioning of the courts under inherent powers." *Id.* Accordingly, the Court affirmed the declaratory judgment of the trial court.

This Court made a similar pronouncement in *Center Line v 37th District Court,* 403 Mich 595; 271 NW2d 526 (1978). There, the Court held, pursuant to MCL 600.8251(3), a district court in a district of the third class must convene in "each city having a population of 3,250 or more and within each township having a population of 12,000 or more." The Court noted that because the 37th District consisted of Warren and Center Line, it "was made a district of the third class, i.e. 'a district consisting of 1 more political subdivisions.'" *Id.* at 601. In doing so, the court significantly observed that "*each political subdivision*" was "responsible for court operations." *Id.* (emphasis added).

This Court's question is "whether in the absence of an agreement for joint funding of a district court in districts of the third class where the court sits in only one political division, all district funding units within the district have an obligation to fund the court." This Court has previously answered question 1 in the affirmative, observing irrefutably that "where a judicial district consists of more than one district control unit, each unit is required to contribute to the expenses of the court." *Bay,* 385 Mich at 727. This Court's holding is consistent with the "the manifest legislative intent" articulated in MCL 600.8271(1). Appellants' assertions that a district funding unit or district control unit may merely rebuff a district court's request for appropriations finds no support in relevant statutory or common law.

2. The Legislature intended that "district control units" or "district funding units" fund the district courts.

The Legislature expressed an intention that municipal entities serving as "district control units" or "district funding units" fund the district courts. As a foundational matter, this Court has noted that "[d]espite the fact that the courts have always been regarded as part of state government, they have operated historically on local funds and resources." *Grand Traverse County v State,* 450 Mich 457, 474; 538 NW2d 1 (1995). In *Grand Traverse County*, this Court found that "[a]n unbroken line of cases stretching back 130 years recognizes the practice of imposing the costs of operating the courts on *local funding units.*" *Id.* (emphasis added). See also, *Cameron v Monroe County Probate Court,* 457 Mich 423, 427; 579 NW2d 859 (1998) (noting that "[a]lthough the expenses of justice are incurred for the benefit of the state, they are charged against the counties in accordance with old usage, as a proper method of distributing the burden").

Decisions interpreting MCL 600.8271 reinforce the notion that, generally, a "district control unit" must fund the district court. For example, in *Employees and Judge of the Second Judicial District Court, Second Division v Hillsdale County,* 423 Mich 705; 318 NW2d 744 (1985), a district court brought an action against a board of commissioners. The Court held that where "the Legislature *has by statute granted authority or created a duty, the local funding unit may not refuse to provide adequate funding to fulfill the function.*" *Id.* at 721 (emphasis added).

Michigan courts have found that sharing expenses between the "funding" or "control" units in districts of the third class is appropriate. For example, in *City of Grand Rapids v County of Kent,* 96 Mich App 15; 292 NW2d 475 (1980), the cities of Grand Rapids, Wyoming, Kentwood, Grandville, and Walker brought an action against Kent County alleging that they did not have the responsibility for "expenses incurred in the safekeeping and maintaining in the Kent

County jail of persons who are charged with and convicted of violations enacted by plaintiff cities." *Id.* at 16. The trial court found that the county was authorized to charge the city such fees.

The Court of Appeals affirmed. In finding that all of the cities in the district of the third class should share expenses, the Court of Appeals noted that at "the plaintiff cities are district control units of district courts of the third class." *Id.* at 21. The court observed that in "first and second class judicial districts, the county is responsible for the maintenance of the district court and two-thirds of all fines and costs resulting from the prosecution of ordinance violations must be paid to the county." *Id.* "Cities constituting third class judicial districts, however, maintain their own district courts, and keep all fines and costs resulting from the prosecution of ordinance violations." *Id.* at 22-23. Considering these facts, the court was "not persuaded that an amount representing a city's fair share of capital expenditures cannot be" assessed to the cities, and noted that to "the extent that the requirements of these non-county prisoners necessitate capital expenditure, therefore, the county is not prohibited from recouping such expenditure from the cities." *Id.* at 23-24.

Indeed, Michigan courts have found that governmental entities that are "district control units" or "district funding units" generally fund the district court. See *Stanley v Ferndale,* 115 Mich App 703; 321 NW2d 681 (1982) (rejecting the county's argument that it was not required to appropriate funds because it was not a party to a collective bargaining contract, and noting that the "district control unit is obligated to appropriate funds necessary for the operation and maintenance of the district courts"); *Kain v State,* 109 Mich App 290, 303; 311 NW2d 351 (1981) ("[A] reading of the various sections of the statute as a whole discloses a clear legislative intent to . . . mandate[] that the 'local control unit' is to pay all the costs of operating the court");

Anspach v City of Livonia, 140 Mich App 403; 364 NW2d 336 (1985) ("[A]s the district control unit, the City of Livonia is responsible for maintaining, financing and operating the district court"); *Rockford v 63rd District Court,* 286 Mich App 624; 781 NW2d 145 (2009) ("Kent County, which is the 'funding unit' of the 63rd District Court . . . is responsible for providing facilities").

Unlike all of the "district control units" or "district funding units" mentioned above, Appellants Pleasant Ridge and Huntington Woods wish to evade their statutory obligation to fund Appellee 45th District Court. Appellants take this position despite this Court's conclusion that a "local funding unit may not refuse to provide adequate funding to fulfill the function." *Employees and Judge of the Second Judicial District Court,* 423 Mich at 721. Indeed, with the exception of Appellants' misinterpretation of MCL 600.8104(2), nowhere in Michigan common or statutory law is a governmental entity that serves as a "district control unit" or a "district funding unit" relieved of their obligation to fund a district court. The Court of Appeals correctly held that "all district funding units in a third-class district" have a duty to provide financial support for the district court. *Huntington Woods,* 311 Mich App at 115-117.

C. Revenue Sharing Under MCL 600.8379(1)(c) Does Not Satisfy Appellants' Obligation to Fund the District Court.

Appellants allege in the alternative that they met their statutory obligation to fund the 45th District Court by allowing it to retain two-thirds of the revenues arising from civil infractions occurring within Appellants' jurisdictions. However, that statute concerns the distribution of revenues derived from fines and cost to the funding units – not the funding units' obligation to fund the district court:

> In districts of the third class, all fines and costs, other than those imposed for the violation of penal law of this state or ordered in a civil infraction action for violation of a law of this state, shall be paid to the political subdivision whose law was violated, except

> that where fines and costs are assessed in a political subdivision whose law was violated, 2/3 shall be paid to the political subdivision where the guilty plea or civil infraction admission was entered or where the trial or civil infraction hearing took place and the balance shall be paid to the political subdivision whose law was violated. [MCL 600.8379(1)(c)].

MCL 600.8379(1)(c) provides the formula through which the district court divides "fines and costs" received as a result of a "violation of a penal law." The statute is neither a means to allow the district funding units to benchmark their funding contributions, nor a means by which the funding units may elude their obligation to appropriate funds for the operation of the district court. Finding that MCL 600.8379(1)(c) allows Appellants to escape their obligation to fund the Court would "render[] nugatory" MCL 600.8271(1)'s unambiguous requirement that the "governing body of each district funding unit *shall annually appropriate, by line-item or lump-sum budget,* funds for the operation of the district court in that district." *Hannay,* 497 Mich at 57; MCL 600.8271(1) (emphasis added).

Moreover, Michigan courts have frowned upon funding units' attempts to evade their funding obligations by asserting that various unrelated payments satisfied their obligations. For example, in *Wayne v Charter Twp of Plymouth,* 240 Mich App 479; 612 NW2d 440 (2000), the plaintiff county brought an action against a township as a result of its refusal to pay per diem fees the county charged for housing and maintaining the township's ordinance violators. The township argued that it was not liable for the fees on the basis that the "payment of taxes pursuant to a public safety millage . . . satisfied its obligation to reimburse the county for the costs of care and maintenance of persons housed in jails." *Id.* at 481. The trial court entered summary disposition for the county.

The Court of Appeals affirmed. In finding that the township failed to fulfill its funding obligations, the court observed that the millage "was levied for 'exclusive purposes,'" including

to "acquire, construct, and/or operate jail, misdemeanant, or juvenile incarceration or detention facilities." *Id.* at 483. Thus, the millage was a "revenue-raising measure to pay the capital expenditures of building or acquiring or modifying jail facilities." *Id.* The "millage did not create a fund to pay for expenses . . . that would constitute the expenses of safekeeping and maintaining prisoners on a daily basis." *Id.* at 483-484. Consequently, the "township's residents' payment of taxes in connection with the millage did not, in whole or in part, satisfy the township's obligation as a third-class judicial district to pay the per diem fees now at issue." *Id.* at 484.

Like the township in *Wayne,* Appellants here seek to avoid their statutory obligation to fund the 45th District Court by asserting that MCL 600.8379(1)(c)'s sharing of "fines and costs" relieved them of their obligation, under MCL 600.8271(1), to "annually appropriate, by line-item or lump-sum budget, funds for the operation of the district court in the district." But like the township's proffering of the millage taxes in *Wayne,* Appellants' offering their share of revenues under MCL 600.8379(1)(c) does "not, in whole or in part, satisfy" their obligation to make an "annual appropriation of funds supporting the district court." *Id.* Such an interpretation would reduce MCL 600.8271(1)'s directives to a mere nullity. As the Court of Appeals held, MCL 600.8379 "provides a formula for revenue sharing, but it does not indicate that the revenue allocation satisfies a district funding unit's obligation to support the district court." *Huntington Woods,* 311 Mich App at 115. Despite Appellants' attempts, MCL 600.8271(1) provides no method for district courts in districts of the third class to dodge their statutory obligation to appropriate funding in support of the district court.

III. 45TH DISTRICT COURT'S ANSWER TO QUESTION 2: THE PARTIES IN THIS CASE NEVER AGREED THAT THE 45TH DISTRICT COURT WOULD BE ENTIRELY FUNDED BY THE CITY OF OAK PARK.

The Court's second question is "whether the parties in this case agreed that the 45th District Court would be funded entirely by the City of Oak Park." The answer to this question is

unquestionably "no." As a preliminary matter, Appellants do fund the 45th District Court through MCL 600.8379(1)(c)'s revenue sharing; thus, Oak Park does not "entirely" fund the 45th District Court, and it never has. The question, therefore, is whether Appellants' revenue sharing under MCL 600.8379(1)(c) satisfies their funding obligation. It does not. Absent an express funding agreement to the contrary, Appellants' revenue sharing fails to satisfy their obligation to "appropriate, by line-item or lump-sum budget, funds for the operation of the" 45th District Court. MCL 600.8271(1).

This case is unique in that the parties have operated for nearly 42 years without an express funding agreement. But the absence of a funding agreement for any length of time does not relieve Appellants of their funding obligations under MCL 600.8271(1). Appellants have no evidence establishing a funding agreement between the parties, the "resolutions" Appellants proffer do not establish the existence of an actual "contract," and Appellants may not contradict the parties' written resolutions with purported "oral" or "implied" agreements. The answer to question 2 is "no."

A. Appellants Have Presented No Evidence Establishing a Contract Among the Parties.

Appellants have failed to present evidence establishing the elements of a contract. A "valid contract requires five elements: (1) parties competent to contract, (2) a proper subject matter, (3) legal consideration, (4) mutuality of agreement, and (5) mutuality of obligation." *AFT v Michigan,* 497 Mich 197, 235; 866 NW2d 782 (2015). "The party seeking to enforce a contract bears the burden of proving that the contract exists." *Id.* "Contracts necessarily contain promises: a contract may consist of a mutual exchange of promises, . . . or the performance of a service in exchange for a promise." *Id.* (citations omitted).

Appellants argue that, in 1975, Oak Park, Huntington Woods, Pleasant Ridge, and Royal Oak Township "reached agreement on three points: (1) the district court would sit only in Oak Park; (2) Oak Park would be the sole direct funding source for the district court's operations; and (3) Huntington Woods' and Pleasant Ridge's financial contribution to the court's operation would be confined to the allocation of fines and costs called for by § 8379(1)(c)." (Appellants' App. for Leave to Appeal at 29). But the resolutions and minutes Appellants cite to form the basis of this alleged contract fail to include any of these terms, and they fail in total to demonstrate a "meeting of the minds" between the parties.

Indeed, "it is hornbook law that a valid contract requires a 'meeting on the minds' on all the essential terms." *Kalmanath v Mercy Memorial Hosp Corp,* 194 Mich App 543, 548; 487 NW2d 499 (1992). "A contract is made when *both parties* have executed or accepted it, and not before." *Id.* (emphasis added). A "counter proposition is not an acceptance," and "[m]ere discussions and negotiation, including unaccepted offers, cannot be a substitute for the formal requirements of a contract." *Id.* "When negotiating the terms, the acceptance of the final offer must be substantially as made; if the purported acceptance includes conditions or differing terms, it is not a valid acceptance – it is a counteroffer and will not bind the parties." *Huntington Nat'l Bank v Daniel J Aronoff Living Trust,* 305 Mich App 496, 508; 853 NW2d 481 (2014). "A meeting of the minds is judged by an objective standard, looking to the express words of the parties and their visible acts, not their subjective states of mind." *Id.* (citations omitted). This Court has held that "meeting of the minds" is a "figurative way of saying that there must be mutual assent." *Goldman v Century Ins Co,* 365 Mich 528, 534; 93 NW2d 240 (1958).

Importantly, a "mere expression of intention does not make a binding contract." *Kalmanath,* 1194 Mich App at 548. On that point, this Court has counseled that the "burden is

on plaintiffs to show the existence of the contract sought to be enforced, and no presumption will be indulged in favor of the execution of a contract since, regardless of the equities of the case, *a court cannot make a contract for the parties where none exists.*" *Hammel v Floor,* 359 Mich 392, 400; 102 NW2d 196 (1960) (emphasis added). See also, *Charter Twp of Ypsilanti v Washtenaw,* unpublished opinion per curiam of the Court of Appeals, issued Feb. 10, 2009; 2009 WL 323401, at *4 (Doc. Nos. 281498, 282354)[1] (finding that three documents – a memorandum, a Police Services summary, and a Resolution of the defendant township – failed to establish a contract existed where "a review of the documents comprising the purported "Master Contract," whether read individually or jointly, clearly evidence merely an intention and framework for negotiation and not a 'meeting on the minds' on all essential terms").

Thus, where the terms of a purported contract are unclear, the parties have not established a "meeting of the minds." See *Hammel,* 359 Mich at 400 (finding that no contract to make mutual and reciprocal wills existed where the "details of how their property was to be distributed [was] so indefinite that no court could draw a conclusion as to how exactly they desired their property to be disposed of"). The plaintiff must be able to demonstrate that the defendant actually made the promises asserted. See *AFT Mich,* 497 Mich at 240 (finding that there was no contract where the "plaintiffs [could not] demonstrate that the state actually made any promises").

The purported "contract" between the parties in this case fails for a variety of similar reasons. First, the resolutions Appellants argue form the basis of this alleged contract do not include any of the terms necessary to demonstrate a "meeting of the minds." Appellants submit only three documents to support the existence of the alleged contract: (1) a December 10, 1974 Resolution from Appellee Pleasant Ridge (the "Pleasant Ridge Resolution") (**Ex. 1**); (2) a

[1] Unpublished decisions are attached at **Exhibit 4**.

December 17, 1974 Resolution from Huntington Woods (the "Huntington Woods Resolution") (**Ex. 2**); and an April 5, 1983 Resolution from Oak Park (the "Oak Park Resolution") (**Ex. 3**). None of these documents include the terms of Appellants' alleged contract. And, importantly, there is no document from the 45th District Court or Royal Oak Township.

As an initial matter, the *only* document of the three that could arguably relieve either of the Appellants of the obligation to finance the district court is the Pleasant Ridge Resolution. The Pleasant Ridge resolution provides that the "City of Pleasant Ridge will not incur any expenses in connection with the operation of the new district court and will receive one-third of all fines assed which originate in the City of Pleasant Ridge." **(Ex. 1).** But far from establishing anything resembling a "meeting of the minds," the Pleasant Ridge Resolution is the *only* document that suggests that it will not be responsible for funding the court. The Pleasant Ridge Resolution is also curiously silent regarding how it will "not incur any expenses in connection with the operation" of the 45th District Court, yet still fulfill its revenue sharing obligation under MCL 600.8379(1)(c). The Huntington Woods Resolution, though it is similar to the Pleasant Ridge Resolution in some of respects, is completely silent with regard to funding. **(Ex.2).** Appellants' suggestion that the City of Oak Park prepared "draft resolutions" for Huntington Woods and Pleasant Ridge finds no support in the record whatsoever. Moreover, Appellants have provided no evidence that either Oak Park or Royal Oak Township – a city Appellants generally omitted from their briefing – agreed that Oak Park would exclusively fund the district court.

Appellants tout the introductory provisions of the April 5, 1983 Oak Park Resolution as evidence that Oak Park agreed to exclusively fund the district court, because those provisions suggest that the "City of Oak Park has operated as the district control unit for the 45-B District

Court," and that since "January 1, 1975, the City of Oak Park, as the district control unit for the 45-B District Court, has borne the total expense of operating said court . . . ." (Appellants' App. for Leave at 31) (**Ex. 3**) But these provisions do not support Appellants' theory, and, when considered in full, convincingly demonstrate that no agreement existed between the parties:

> WHEREAS, since January 1, 1975 the City of Oak Park, as the district control unit for the 45-B District Court, has borne the total expense of operating said Court located within its municipal offices, and since 1975 the subsidy from the City of Oak Park's General Operating Fund required to maintain the operations of said Court has grown from Fifteen Thousand Sixty-Three Dollars ($15,063) to an estimated subsidy of Two Hundred Forty-Nine Thousand One Hundred Fourteen Dollars ($249,114) in fiscal year 1983-84.
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> * * *
>
> WHEREAS, the Judges of the 45-B District Court have expressed to the City of Oak Park their inability to properly dispose of cases on their docket due to the inadequacy of facilities . . . and have expressed their desire and intent to have the 45-B District Court sit in other political subdivisions within the 45-B District Court boundaries, unless adequate facilities are provided within the political subdivision of the City of Oak Park, and
>
> * * *
>
> NOW THEREFORE BE IT RESOLVED AS FOLLOWS;
>
> 1. That the City of Huntington Woods, City of Pleasant Ridge and Township of Royal Oak are hereby requested, pursuant to Section 8261 of Public Act 154, to provide court facilities within each of their political subdivisions, and to provide for the maintenance and operation of the 45-B District Court within their political subdivisions as required by Section 8104 of Public Act 154.
>
> 2. That in the alternative, the City of Huntington Woods, City of Pleasant Ridge and Township of Royal Oak *are hereby requested to enter into an agreement with the City of Oak Park to share all of the expenses of maintaining, financing, and operating the 45-B District Court at a location within the boundaries of the political subdivision of the City of Oak Park.* **[Ex. 3** (emphasis added)].

Thus, none of the three documents Appellants proffer suffice to establish an agreement between the parties. First, *only* the Pleasant Ridge Resolution purports to relieve the city of the obligation of funding the district court – the Huntington Woods Resolution makes no such declaration. Further, far from corroborating the terms of Appellants' purported agreement, the Oak Park Resolution, passed nearly 10 years after the Huntington Woods and Pleasant Ridge Resolutions, specifically requests that the parties *"enter into an agreement."* *Id.* (emphasis added). Oak Park does not suggest that the parties should "amend," "revise," or otherwise "modify" an existing agreement – it proposes that the parties establish one.

"A meeting of the minds is judged by an objective standard looking to the express words of the parties and their visible acts, not their subjective states of mind." *Huntington Nat'l Bank*, 305 Mich App at 508. Here, the "express words" and "visible acts" of the parties objectively demonstrate that no contract exists: Pleasant Ridge suggests that it "will not incur any expenses in connection" with the Court (**Ex. 1**); Huntington Woods makes no statement at all with respect to funding (**Ex. 2**); and Oak Park, nearly 10 years later, asks Pleasant Ridge, Huntington Woods, and Royal Oak Township to "enter into an agreement." (**Ex. 3**). Appellants do not even mention Royal Oak Township in their briefing, and their assertion that Oak Park distributed a "draft resolution" has no support. Ultimately, Appellants have offered no other evidence substantiating the existence of a contract. Considering these facts, the Court of Appeals correctly held that the Oak Park Resolution "clearly indicates that there was no agreement between the communities." *Huntington Woods*, 311 Mich App 116.

Appellants suggest that Oak Park has presented "no evidence to support the assertion that no . . . . resolution existed" to confirm the alleged agreement between the parties. (Appellants' App. for Leave at 32). But the "burden is on *plaintiffs* to show the existence of a contract sought

to be enforced, and no presumption will be indulged in favor of the execution of a contract, since regardless of the equities of the case, *a court cannot make a contract for the parties when none exists.*" *Id. Hammel,* 359 Mich at 400 (emphasis added). Appellants would have Oak Park essentially prove a negative – that no evidence exists to demonstrate that there is no contract between the parties. This Court has previously looked unfavorably on such a burden of proof. See *Hayes-Albion v Kuberski,* 421 Mich 170, 185; 364 NW2d 609 (1984) (finding that requiring the plaintiffs to "prove a negative" in a trade secrets case would be "unduly burdensome"). Ultimately, Appellants may not shift the burden to demonstrate the existence of a contract to Appellees simply because they lack the documents to support their claim.

Second, even if a contract existed between the parties based on Appellants' theory, it fails in all respects to adhere to the requirements of the Act. MCL 600.8104(3) delineates the procedures to establish a contract between the parties:

> One or more district funding units within any district may agree among themselves to share any or all of the expenses of maintaining, financing, or operating the district court. T*o become effective such agreements must be approved by resolution adopted by the governing body of the respective political subdivisions entering into the agreement, and upon approval such agreements shall become effective and binding in accordance with, to the extent of, and for such period stated in the agreement.* [MCL 600.8104(3) (emphasis added)].

No "agreement approved by resolution adopted by the governing body of the respective political subdivisions" exists in this case. *Id.* The only resolutions Appellants have offered represent conflicting interpretations of the parties' relationship. Pleasant Ridge believed that it would "not incur any expenses in connection" with the Court; Huntington Woods makes no representation about expenses; Oak Park, ten years later, asks the district funding units to enter into an agreement; and Royal Oak Township apparently says nothing at all. Such differing

representations plainly fail to meet the requirements to establish an agreement under MCL 600.8104(3).

Finally, Appellants have failed to provide any evidence establishing the effective date or term of the purported agreement. Significantly, the Pleasant Ridge Resolution, the Huntington Woods Resolution, and the Oak Park Resolution each reference the "45-B District Court," which the Legislature abolished on July 1, 2012. MCL 600.8213(4). The question arises: would this purported agreement have ceased with the abolition of the 45-B District Court? In any event, the absence of any term in the resolutions is yet another reason why Appellants have failed to establish the existence of a contract, because such agreement would "only be effective to the extent of, and for such period stated in the agreement." MCL 600.8104(3). That is, MCL 600.8104(3) requires a specific time period to be included in a joint funding agreement. Considering these facts, no agreement existed that the 45th District Court would be entirely funded by the City of Oak Park.

B. Appellants May Not Contradict the Parties' Written Resolutions with Extrinsic Evidence.

Appellants alternatively argue that the parties' conduct suggests that an implied or oral agreement existed between the parties. However, as noted above, such agreement, even if it did exist, would only be effective if "approved by resolution adopted by the governing body of the respective political subdivisions." MCL 600.8104(3). And this Court has additionally maintained that "where comprehensive legislation prescribes in detail a course of conduct to pursue and the parties and things affected, and designates specific limitations and exceptions, the Legislature will be found to have intended that the statute supersede and replace the common law dealing with the subject matter." *Trentadue v Bucker Auto Lawn Sprikler Co,* 479 Mich 378, 390; 738 NW2d 664 (2007). As the Court of Appeals appropriately held, Appellants "cannot

establish the existence of any valid agreements respecting their funding obligations without satisfying the requirements of MCL 600.8104(3)." *Huntington Woods,* 311 Mich App 119.

This Court has long held that a party may not attempt to contradict public records with extrinsic evidence. In *Stevenson v Bay City,* 26 Mich 44 (1872), the plaintiff brought an action against a city in a matter involving a bond. The plaintiff attempted to demonstrate through parol evidence that the ordinance establishing the duties of the city's controller "was actually passed by less than a majority of the alderman, and therefore void." *Id.* at 46. The lower court refused to allow the evidence admitted, finding that the city records demonstrated a "majority vote, such as the charter required." *Id.*

This Court affirmed. In refusing to allow the entry of extrinsic evidence, the Court held that "[w]hen the law requires municipal bodies to keep records of their official action in the legislative business conducted at their meetings, *the whole policy of the law would be defeated if they could rest partly in writing and partly in parol, and the true official history of their acts would perish with the living witnesses, or fluctuate with their conflicting memories.*" *Id.* (emphasis added). The Court held that no "*authority was found, and we think none ought to be, which would permit official records to be received as either partial or uncertain memorials.*" *Id.* at 46-47 (emphasis added). Indeed, that "which is not established by the written records, fairly construed, cannot be shown to vary them. They are intended to serve as perpetual evidence, and no written proofs can have this permanence." *Id.* at 47. See also, *46th Distr Court v Crawford County,* 266 Mich App 150, 161; 702 NW2d 588 (2006) vacated on other grounds, 477 Mich 922 (a governmental entity "speaks only through its official minutes and resolutions and their import *may not be altered or supplemented by parol evidence regarding the intention of the*

individual members" (emphasis added)); *Ferrario v Board of Escanaba Area Public Schools,* 426 Mich 353, 371; 395 NW2d 195 (1986) (same).

Thus, the resolutions in this case speak for themselves, and Michigan law precludes Appellants from offering evidence to supplement or contradict them. For example, in *Burthville Twp v Fort Gratiot Twp,* unpublished opinion per curiam of the Court of Appeals, issued Mar. 10, 2000; 2000 WL 33522374 (Doc. No. 209178), a township brought an action against the defendant seeking a declaratory judgment compelling the defendant to cease using a specific water system. The trial court later concluded that an alleged contract between the parties was ambiguous and used parol evidence to interpret the agreement. After reviewing the evidence, the court found that an agreement existed between the parties and entered a declaratory judgment.

The Court of Appeals reversed. In finding that there was no agreement, the court found that the "resolution and indemnity agreement, even if taken together, do not create a contract between plaintiff and defendant." *Id.* at *3. Rather, those "documents are what they purport to be and no more." *Id.* The court found that the "resolution does not contain the essential elements of a contract: offer, acceptance, and consideration. Thus, it is not appropriate to apply contract principles to the resolution." *Id.* Citing *Stevenson,* the court concluded that it was "not proper to consider parol evidence in this case *where the resolution speaks for itself.*" *Id.* (emphasis added).

Here, Appellants suggest that the parties' conduct demonstrates an implied contract was in place. But as this Court held long ago, in the face of resolutions clearly articulating each parties' positions, Appellants may not "alter" or "supplement" the intention of the parties. *46th Distr Court,* 266 Mich App at 161. Like the resolution in *Burthville Twp,* the resolutions here, "even if taken together, do not create a contract between [Appellants] and [Appellees]." 2000 WL 33522374, at *3. Indeed, the resolutions "are what they purport to be and no more." *Id.*

Appellants may not offer the "conduct of the parties" to establish a contract where the express, written resolutions demonstrate that no contract existed. Accordingly, the parties in this case *did not* agree that the 45th District Court would be funded entirely by Oak Park.

IV. 45TH DISTRICT COURT'S ANSWER TO QUESTION 3: REVENUE FROM FEES COLLECTED FOR BUILDING OPERATIONS AND RETIREE BENEFITS ARE NOT SUBJECT TO REVENUE SHARING.

The Court's third question is "whether revenue from fees collected for building operations and retiree benefits is subject to revenue sharing under MCL 600.8379(1)(c). The answer to this question is "no."

MCL 600.8379(1)(c) provides that district funding units in districts of the third class must share "fines and costs:"

> . . . In districts of the third class all *fines and costs* . . . shall be paid to the political subdivision whose law was violated, except that where fines and costs are assessed in a political subdivision other than the political subdivision whose law was violated, 2/3 shall be paid to the political subdivisions where the guilty plea or civil infraction admission was entered or where the trial or civil infraction action hearing took place and the balance shall be paid to the political subdivision whose law was violated. [emphasis added].

Chapter 48 of the Act, Collection of Penalties, Fines, and Forfeited Recognizance, provides definitions for the terms "costs," "fee," "penalty," and "civil violation:"

> (a) "Costs" means any monetary amount that the court is authorized to assess and collect for prosecution, adjudication, or processing of criminal offenses, civil infractions, civil violations, and parking violations, including court costs, the cost or prosecution, and the cost of providing court-ordered legal assistance to the defendant.
>
> (b) "Fee" means any monetary amount other than costs or a penalty, that the court is authorized to impose and collect pursuant to a conviction, finding of responsibility, or other adjudication of a criminal offense, a civil infraction, a civil violation, or a parking violation, including a driver license reinstatement fee.

> (c) "Penalty" includes fines, forfeitures, and forfeited recognizances.
>
> (d) "Civil violation" means a violation of this state or a local ordinance, other than a criminal offense or a violation that is defined or designated as a civil infraction, that is punishable by a civil fine or forfeiture under the applicable law or ordinance.[MCL 600.4801].

Considering these definitions, the fees imposed for the District Court Municipal Building Construction Fund–Fund 470 ("Building Construction Fee") and the Retiree Health Care District court Fund-Fund 678 ("Retiree Health Care Fee") are not the "fines and costs" subject to revenue sharing under MCL 600.8379(1)(c). The Act defines "costs" to mean an amount a court is authorized to collect for "prosecution, adjudication, or processing of criminal offenses . . . ." MCL 600.4801(a). The 45th District Court does not collect either the Building Construction Fee or the Retiree Health Care Fee for the "prosecution, adjudication, or processing of criminal offenses." Accordingly, revenue collected for the building construction fund and for retiree health care costs does not constitute a "court cost." Rather, as the Court of Appeals held in its exhaustive analysis, "[s]uch assessments come within the statutory definition of 'fee,' which is defined as 'any monetary amount, other than costs or a penalty, that the court is authorized to impose and collect pursuant to a conviction." *Huntington Woods,* 311 Mich App 122. Because MCL 600.8379(1)(c) does not contemplate the allocation of a "fee," Appellees were not required to distribute a one-third assessment to Appellants.

Appellants take issue with the Court of Appeals' use of MCL 600.4801 to analyze the provisions of MCL 600.8379(1), because MCL 600.4801 begins with "[a]s used in this chapter." However, "[u]nder the doctrine of *noscitur a sociis,* a phrase must be read in context." *Apsey v Memorial Hosp,* 477 Mich 120, 130; 730 NW2d 695 (2007). "A phrase must be construed in light of the phrases around it, not in a vacuum. Its context gives it meaning." *Id.* (emphasis

added). And "it is a well-settled rule of law that when construing a *statute, a court must read it as a whole*." *Id.* (emphasis added).

Moreover, a court must read the provisions of a statute in context, particularly "in the context of the *entire legislative scheme." Madagula v Taub,* 496 Mich 685, 696; 853 NW2d 75 (2014) (emphasis added). "Ultimately, the goal of *all* such principles is to determine the intent of the Legislature, and an *overly mechanical application of such principles can be counterproductive*." *Id.* at 82 (emphasis added).

In addition, Michigan courts regularly apply the "principle of *expression est unius exclusion alterius,* which is well recognized throughout Michigan jurisprudence." *Feld v Robert & Charles Beauty Salon,* 435 Mich 352, 361; 459 NW2d 279 (1990). This Court has counseled that the principle is a "'product of logic and common sense. It expresses the learning of common experience that when people say one thing *they do not mean something else.*" *Id.* at 362 (emphasis added) (citations omitted). Because MCL 600.8379(1)(c) references the terms "fines and costs," to the exclusion of the term "fee," the Legislature manifested its clear intent to omit "fees," such as the building fees and retirement-benefit fees at issue here, from the reach of MCL 600.83791(1)(c)'s revenue sharing mandate.

Appellants would have the Court reference MCL 769.1k in support of their assertion that the building construction fund and retirement fund fees are "fines and costs" under MCL 600.8379(1)(c). Particularly, Appellants will likely claim, after a quick read of MCL 769.1k(1)(b)(iii)(A)-(C), that the statute expressly includes "salaries and benefits for relevant court personnel" and "necessary expenses for the operation and maintenance of court buildings and facilities" as "costs" within the meaning of the statute. However, a careful examination of MCL 769.1k militates against such a conclusion, which the Court of Appeals aptly recognized.

As expressly required under MCL 769.1k(1)(b)(iii), for salaries and benefits as well as expenses for the operation and maintenance of the court buildings to be considered a "cost," such expenses must be "reasonably related to the **actual cost** incurred by the trial court . . . **in the particular case** [i.e. the prosecution, adjudication, or processing of criminal offenses] . . . ." MCL 769.1k(a)(b)(iii) (emphasis added). However, the Retiree Health Care Fee and the Building Construction Fee are not related to any actual cost incurred by the 45th District Court for the purpose of processing or prosecuting a particular offense or case. Instead, the fees are imposed and collected to fund the retiree health care and the 45th District Court building construction fund, which are expenses independent from the adjudication of any specific case before the 45th District Court.

These funds were established, and the fees collected, in order to remedy the 45th District Court's inability to operate at a serviceable level due to Appellants' failure to properly fund the 45th District Court. To ensure the 45th District Court carries out its mandated responsibilities, and its powers and duties to administer justice, the fees are necessarily imposed for the purpose of providing health care to retirees (not current court personnel) and establishing a fund for court building construction (not ongoing routine maintenance). These are court expenses which are separate and distinct from those contemplated by the Legislature in MCL 769.1k(1)(b)(iii)(A)-(C).[2] Thus, because the fees are not related to actual costs incurred by the 45th District Court in processing criminal offenses—rather, they are fees to ensure the 45th District Court functions as required by law—citing to MCL 769.1k does not support Appellants' claim that the fees should be distributed in accordance with the statutory formula of MCL 600.8739(1)(c).

[2] Further, MCL 769.1k(1)(b)(iii) refers to the operation and maintenance of court facilities, such as the daily upkeep and repairs for normal wear and tear. The money collected for the Building Construction Fund is not for maintenance of the court building. Rather, it is for the construction of a new building, which will be suitable for the 45th District Court to operate within mandates of SCAO requirements as opposed to its current facility conditions.

The Court of Appeals correctly recognized this distinction, especially by holding that the fees are neither a penalty for a criminal offense nor a cost incurred by the 45th District Court for prosecuting any case before it. *Huntington Woods,* 311 Mich App at 122. Indeed, the Court of Appeals appropriately declined the Appellants' invitation to construe "fines and costs," as defined in MCL 600.8379(1)(c) or MCL 769.1k, "in a vacuum." *Apsey,* 477 Mich at 130. In doing so, the Court of Appeals properly considered all statutes and their pertinent definitions in holding that the building and retiree benefit fees were "fees," exempt from distribution under MCL 600.8379(1)(c), and "neither Oak Park nor the 45th District Court was required to distribute one-third of the assessments to plaintiffs." *Huntington Woods,* 311 Mich App at 122.

V. CONCLUSION

For the foregoing reasons, the 45th District Court respectfully requests that this Honorable Court deny Appellants' Application for Leave to Appeal.

Respectfully submitted,

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Dated: April 6, 2016

DETROIT 57110-1 1380928v11

EXHIBIT 1

Commissioners received the memo from City Manager Barry of December 6, 1974 regarding the change from Municipal Court to 45-B District Court, the letter of November 29, 1974 from Judge Cooper and the letter of November 21, 1974 from City Manager Thompson of Oak Park regarding the needed resolution waiving the court location requirement for District 45-B Court.

Moved by Commissioner Slavens, supported by Commissioner Camp that the following resolution, as approved by City Attorney Gillis, be adopted:

WHEREAS, the Michigan Legislature by 1974 P.A. 145 has abolished the Municipal Court for the City of Pleasant Ridge effective January 1, 1975 and replaced it with the District Court for the 45-B District, a district of the third class, serving the cities of Pleasant Ridge, Oak Park, Huntington Woods and the Township of Royal Oak,

WHEREAS, under a provision of the District Court Act, MCLA 600.8251 (3) MSA 27A 8251, a district court of the third class is required by law to sit at each city having a population of 3,250 or more (at the last federal decennial census) unless the governing body of the city and the court agree that the court shall not sit in the city,

WHEREAS, the population of the City of Pleasant Ridge at the last federal decennial census was 3,989,

WHEREAS, the judges of the Oak Park Municipal Court, who will under the terms of 1974 PA 145, become the district judges of the 45-B District Court on January 1, 1975 have conferred with the appropriate officals of the City of Pleasant Ridge and with the City Commission and have agreed that the court location requirement of MCLA 600.8251 (3) shall be waived and that the district court for the 45-B District shall not be required to sit in the City of Pleasant Ridge,

WHEREAS, the City of Pleasant Ridge will not incur any expenses in connection with the operation of the new district court and will receive one-third of all fines assessed which originate in the City of Pleasant Ridge,

NOW, THEREFORE, BE IT RESOLVED that the City Commission of the City of Pleasant Ridge waives the court location requirement of MCLA 600.8251 (3); MSA 27A,8251 (3) so that the judges of District 45-B need not sit in the city limits of the City of Pleasant Ridge and the City of Pleasant Ridge will not incur any expense in connection with the operation of the new District Court and will receive one-third of all fines assessed which originate in the City of Pleasant Ridge.

YEAS: 5 NAYS: 0 ABSENT: 0

Mayor Scott will write a letter to Judge Charles Y. Cooper, Jr. expressing appreciation of his services to the City of Pleasant Ridge as Judge of the Municipal Court.

Moved by Commissioner Slavens, supported by Commissioner Camp, that the following resolution, as requested by Oakland County Treasurer, Hugh Dohany, be adopted:

WHEREAS, there may now be in and may hereafter from time to time come into the hands of E. Joan Reihm, Treasurer of the City of Pleasant Ridge, Michigan

EXHIBIT 2

12/17/74

as follows:

Carried unanimously,

The Mayor thereupon declared said resolution adopted.

DISTRICT COURT

Mr. Wilfong presented a proposed resolution to be adopted if the City chooses to have District Court sit exclusively in the City of Oak Park. He added that Pleasant Ridge has already taken this action and that it would be his recommendation. If District Court were to be held in Huntington Woods the City would receive one hundred percent of fines levied rather than the thirty-three and one-third percent it would receive if Huntington Woods cases were heard in Oak Park. He listed the probable expenses of holding court in Huntington Woods, including adding judicial office and chamber space to the City Offices; acquiring recording equipment; furnishing a full time court clerk, a court officer when required, and a court stenographer; providing a minimal law library; and paying a percentage of the two judges' annual salaries. In addition there would be the disruption in the City Offices and the need for additional space for parking.

-137- Moved by Commr. Jones and supported by Commr. Pressley that the following resolution be adopted:

WHEREAS, the Michigan Legislature by 1974 PA 145 has abolished the Municipal Court for the City of Huntington Woods, effective January 1, 1975, and replaced it with the District Court for the 45-B District, a district of the third class, serving the cities of Huntington Woods, Oak Park, Pleasant Ridge and the Township of Royal Oak; and

WHEREAS, under a provision of the District Court Act, MCLA 600.8251 (3); MSA 27A.8251 (3), a district court of the third class is required by law to sit at each city having a population of 3,250 or more (at the last federal decennial census) unless the governing body of the city and the court agree that the court shall not sit in the city; and

WHEREAS, the population of the City of Huntington Woods at the last federal decennial census was 8,536; and

WHEREAS, the judges of the Oak Park Municipal Court who will, under the terms of 1974 PA 145, become the district judges of the 45-B District on January 1, 1975, have conferred with the appropriate officials of the City of Huntington Woods and with the city council and have agreed that the court location requirement of MCLA 600.8251 (3) shall be waived and that the district court for the 45-B District shall not be required to sit in the City of Huntington Woods;

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Huntington Woods waives the court location requirement of MCLA 600.8251 (3); MSA 27A.8251 (3) so that the judges of District 45-B need not sit in the city limits of the City of Huntington Woods.

Upon said resolution being put to a vote the Commission voted thereon as follows:

Carried unanimously,

The Mayor thereupon declared said resolution adopted.

Mr. Hayward has been asked to prepare a resolution honoring Judge Christiansen for his service to the City.

COMMISSIONERS REMARKS

It was reported that Huntington Woods was used as a model in a solid waste disposal study by The National Commission on Productivity.

The work and expense involved in the removal of snow following the

EXHIBIT 3

RESCHEDULED COUNCIL MEETING
APRIL 5, 1983

The Rescheduled Meeting of the Council of the City of Oak Park was cal to order at 7:40 P.M. by Mayor Charlotte M. Rothstein.

INVOCATION: Rev. Steven Kallabat, Chaldean Catholic Church, 24000-24010 Coolidge.

PRESENT: Mayor Rothstein, Mayor Pro Tem Naftaly, Councilman Dema Councilman Disner, Councilman Frohlich, City Manager Ma Assistant City Attorney Goodman, Deputy City Clerk Gadc

ABSENT: None

CM-04-267-83: APPROVAL OF MINUTES - REGULAR COUNCIL MEETING OF MARCH AND SPECIAL COUNCIL MEETING OF MARCH 31, 1983

Motion by Councilman Frohlich supported by Councilman Demas: To approve the Minutes of the Regular Council Meeting of March 2 and Special Council Meeting of March 31, 1983 as printed and dist

VOTE: Yes, (5) No, None

Mayor Rothstein and Councilman Frohlich presented a Proclamation to th Chairman and members of the Beautification Advisory Commission designa April 10 through April 24, 1983 as Beautification Days in the City of Oak Park and wished the Commission good luck in this endeavor.

Mayor Rothstein announced that the Public Hearing on the Industrial Development District for Nemer Management has been postponed until the Regular Council Meeting of April 18, 1983.

CM-04-268-83: NATIONAL LEAGUE OF CITIES - COMPROMISE PROPOSAL - FEDEF CABLE LEGISLATION - CITY MANAGER

Motion by Councilman Demas supported by Councilman Frohlich: To receive communication dated March 18, 1983 from Alan Beals, National League of Cities, regarding the Compromise Proposal on Federal Cable Legislation; to direct City Manager Marsh to forwar information to the Cable Advisory Commission.

VOTE: Yes, (5) No, None

CM-04-269-83: JEWISH WAR VETERANS - PERMISSION TO SOLICIT FUNDS - APPROVED

Motion by Mayor Pro Tem Naftaly supported by Councilman Disner:
To receive communication from Norman L. Berkley, Department Commander, Jewish War Veterans, requesting permission to sell poppies in the City of Oak Park, Friday, May 20, 1983; to grant permission requested insofar as it is within the power of the City to grant such permission and to notify the Department of Public Safety of the date of this solicitation.

VOTE: Yes, (5) No, None

CM-04-270-83: LILLIAN MANCINI - 24060 BERKLEY - BLOCK INCIDENTS

Motion by Councilman Frohlich supported by Mayor Pro Tem Naftaly:
To receive communication dated March 18, 1983 from Mrs. Lillian Mancini, 24060 Berkley, expressing concern about the break-ins and robberies on her block and requesting a new street light on the corner as well as Neighborhood Watch signs; to instruct Director of Public Works, Henry Lybeck, to inquire into the matter of installing a street light.

VOTE: Yes, (5) No, None

Mrs. Mancini, 24060 Berkley, Mr. John Ensink, 24100 Berkley, and Mr. Albert Singer, 24061 Berkley, all stressed the need for improved street lighting in this area.

CM-04-271-83: NOTICE OF PUBLIC HEARING - MICHIGAN DEPARTMENT OF TRANSPORTATION - I-696 NOISE ABATEMENT

Motion by Councilman Demas supported by Councilman Disner:
To receive communication from Jack E. Morgan, Manager, Public Involvement Section, Michigan Department of Transportation, notifying Council of a Public Hearing, regarding I-696 Noise Abatement between Kipling in Oak Park and Morton in Huntington Woods scheduled for 7:30 P.M., April 28, 1983, in the Huntington Woods Recreation Center; to direct that members of staff and Council attend on behalf of the City.

VOTE: Yes, (5) No, None

CM-04-272-83: CITY OF CLAWSON RESOLUTION RE: Senate Bill 66 - SUPPORT OF NATIONAL LEAGUE OF CITIES COMPROMISE POSITION - FEDERAL CABLE LEGISLATION

Motion by Mayor Pro Tem Naftaly supported by Councilman Disner:
To receive Resolution from the City of Clawson adopted on March 15, 1983, expressing opposition to Senate Bill 66 which would give the Federal Government more control over local cable television franchises.

VOTE: Yes, (5) No, None

04-273-83: APPLICATION - CITY MARQUEE SIGN - WOPR FM - APPROVED

Motion by Mayor Pro Tem Naftaly supported by Councilman Frohlich:
To approve use of the City's marquee sign by radio station WOPR FM in accordance with application submitted; April 14, 15, and 16, 1983.

VOTE: Yes, (5) No, None

04-274-83: 1983 MERCHANTS LICENSES - INITIAL AND RENEWAL - MECHANICAL AMUSEMENT DEVICE - ARMORY EXHIBITION

Motion by Councilman Frohlich supported by Mayor Pro Tem Naftaly:
To approve the following list of 1983 Merchants Licenses:

License #	Merchant	Address	Fee
INITIALS FOR 1983			
9069	Karadolian Manuf. Co., Inc.	21700 Greenfield Rd. Suite #302	54.00
9075	Grand Shoe Repair	8150 W. Nine Mile	54.00
9081	Foley Uniform	21184 Greenfield Rd.	54.00
RENEWALS FOR 1983			
9078	Ace Bushing Co., Inc.	10620 W. Nine Mile	59.40
MECHANICAL AMUSEMENT DEVICE - 1983			
8995	Detroit Bagel Baking Co.	24780 Coolidge	250.00
LICENSE FOR EXHIBIT FOR EIGHT MILE ARMORY			
9085	Health Sports Fitness Show	Eight Mile Armory	1,200.00

VOTE: Yes, (5) No, None

ST CALL TO AUDIENCE:

or Rothstein announced that this was the time for the First Call to lence and invited those persons who had matters regarding the City Oak Park to speak at this time.

hael Rich, 26221 Raine, asked Council if Oak Park will be having le access channels.

or Rothstein responded that Oak Park will have cable access channels.

ncilman Demas noted that the cable access channels will be available n the studio is ready.

re being no further persons present who wished to be heard, the First
l to Audience was called to a close by Mayor Rothstein.

04-275-83: ORDINANCE NO. O-83-164 - SIGN AMENDMENT, APPENDIX A-ZONING - ADOPTED

Motion by Councilman Frohlich supported by Councilman Disner:
To adopt Ordinance No. O-83-164, Sign Ordinance Amendment, Appendix A-Zoning (as herein contained).

ROLL CALL VOTE: Yes, Naftaly, Demas, Disner, Frohlich, Rothstein
No, None

04-276-83: ORDINANCE NO. O-83-165 - SIGN AMENDMENT, CHAPTER 17, FILLING STATIONS - ADOPTED

Motion by Mayor Pro Tem Naftaly supported by Councilman Demas:
To adopt Ordinance No. O-83-165, Sign Amendment, Chapter 17, Filling Stations (as herein contained).

ROLL CALL VOTE: Yes, Demas, Disner, Frohlich, Rothstein, Naftaly
No, None

04-277-83: ORDINANCE NO. O-83-166 - AMENDMENT TO RECREATION ADVISORY BOARD - EX-OFFICIO MEMBERS - ADOPTED

Motion by Councilman Disner supported by Mayor Pro Tem Naftaly:
To adopt Ordinance No. O-83-166 an amendment to Recreation Advisory Board, Ex-Officio Members (as herein contained).

ROLL CALL VOTE: Yes, Disner, Frohlich, Rothstein, Naftaly, Demas
No, None

04-278-83: AWARD OF BID - TENNIS COURT LIGHTING REPAIRS

Motion by Mayor Pro Tem Naftaly supported by Councilman Frohlich:
To receive report of bids submitted on April 4, 1983 for replacement of tennis court lights and pole; to award bid to the low bidder, Transformer Inspection Company, Inc. of Royal Oak, in the amount of $14,208.00; to be charged to Account No. 10-21-48-410, unforeseen expenses in non-departmental expense, general fund.

ROLL CALL VOTE: Yes, Frohlich, Rothstein, Naftaly, Demas, Disner
No, None

CM-04-279-83: AWARD OF BID - NEW SIGN TRUCK

Motion by Councilman Demas supported by Mayor Pro Tem Naftaly:
To receive report of bids submitted on March 14, 1983 for one (1) new 1983 conventional cab truck with dry freight van body and power lift tailgate, to be used by the sign department in the Department of Public Works; to award bid to the low bidder meeting specifications, Wolverine Ford Truck of Dearborn, Michigan, in the amount of $19,430.00; to be charged to Account Number 30-18-21-602.

ROLL CALL VOTE: Yes, Rothstein, Naftaly, Demas, Disner, Frohlich
No, None

CM-04-280-83: RESOLUTION RE: TRANSFER OF FUNDS - SELF-LOADING DUMP TRUCK

Motion by Councilman Frohlich supported by Mayor Pro Tem Naftaly:
To adopt the following Resolution:

THAT the City Manager be hereby authorized to transfer $10,394.25 from Motor Vehicle Equipment Fund account number 30-18-21-602, Trucks, to Motor Vehicle Equipment Fund account number 30-18-21-609, Dump Truck, to defray the cost of the dump truck.

ROLL CALL VOTE: Yes, Naftaly, Demas, Disner, Frohlich, Rothstein
No, None

CM-04-281-83: AWARD OF BID - SELF-LOADING DUMP TRUCK

Motion by Mayor Pro Tem Naftaly supported by Councilman Frohlich:
To receive report of bids submitted on March 14, 1983 for one (1) new 1983 conventional cab truck with 7 yard dump body and self-loading bucket, to be used in the Department of Public Works; to award bid to low bidder meeting specifications, GMC Truck Center of Pontiac, Michigan, for $52,394.25; to be charged to Account No. 30-18-21-609; bid deemed to be in the best interest of the City of Oak Park.

ROLL CALL VOTE: Yes, Demas, Disner, Frohlich, Rothstein, Naftaly
No, None

CM-04-282-83: RESOLUTION RE: TRANSFER OF FUNDS - 200 GALLON SPRAYER

Motion by Councilman Disner supported by Councilman Demas:
To adopt the following Resolution:

:M-04-282-83: (Continued)

That the City Manager be hereby authorized to transfer $281.25 from Motor Vehicle Equipment Fund account number 30-18-44-611, Street Sweepers, to Motor Vehicle Equipment Fund account number 30-18-44-649, Miscellaneous, to defray the cost of the sprayer.

ROLL CALL VOTE: Yes, Disner, Frohlich, Rothstein, Naftaly, Demas
No, None

:M-04-283-83: AWARD OF BID - 200 GALLON SPRAYER

Motion by Councilman Disner supported by Councilman Frohlich: To receive report of bids submitted on March 14, 1983 for one (1) new 200 gallon sprayer, to be used in the Department of Public Works; to award bid to low bidder meeting specifications, Weingartz Supply Company of Utica, Michigan, in the amount of $2,594.00; to be charged to Account Number 30-18-44-649.

ROLL CALL VOTE: Yes, Frohlich, Rothstein, Naftaly, Demas, Disner
No, None

M-04-284-83: AWARD OF BID - RENOVATION OF PUBLIC SAFETY BUILDING

Motion by Councilman Frohlich supported by Councilman Disner: To receive report of bids submitted on March 30, 1983 for renovation of the Public Safety Building; to award bid to the low bidder for the base bid and alternate one, Builders One, Inc., in the total amount of $216,256; to authorize the appropriate City officials to execute the contract on behalf of the City.

ROLL CALL VOTE: Yes, Rothstein, Naftaly, Demas, Disner, Frohlich
No, None

ouncilman Demas asked Mr. DeConti of DeConti Architect and Associates, Inc., ether he had any prior knowledge of Builders One.

. DeConti stated that he had called the references for Builders One and is satisfied with the positive response. He also noted that Builders One is bonded for the labor and materials.

ayor Rothstein noted that Mr. DeConti will be monitoring the renovation work d will be supplying detail inspections.

. Mark Swartz, Mars Building, the low bidder without alternate one, stated at usually it is stated on the bid prospectus whether the alternate will be nsidered.

-04-285-83: MINUTES

Motion by Mayor Pro Tem Naftaly supported by Councilman Disner:
To receive Minutes of the following listed meetings:

a. Planning Commission Meeting of March 15, 1983
b. Board of Zoning Appeals Meeting of March 22, 1983
c. Cable Television Advisory Commission Meeting of March 15, 1983
d. Library Advisory Board Meeting of March 17, 1983
e. Sports Commission Meeting of March 16, 1983
f. Beautification Advisory Commission Meeting of March 16, 1983

VOTE: Yes, (5) No, None

/or Rothstein commended Mr. Leonard Hendricks, Director of Community /elopment, and Sandra K. Gadd, Deputy City Clerk, on the Minutes of the anning Commission Meeting of March 15, 1983.

-04-286-83: EXCERPT - LIBRARY ADVISORY BOARD MEETING - OVERDUE FINES AMNESTY - APPROVED

Motion by Councilman Demas supported by Mayor Pro Tem Naftaly:
To concur in action of the Library Advisory Board and grant a two-week amnesty to promote the return of overdue books, dates to be set at a later time.

ROLL CALL VOTE: Yes, Naftaly, Demas, Disner, Frohlich, Rothstein
No, None

-04-287-83: REPORTS

Motion by Councilman Frohlich supported by Mayor Pro Tem Naftaly:
To receive the following departmental reports:

a. Community Services Report for February, 1983
b. Public Safety Report for February, 1983

VOTE: Yes, (5) No, None

CM-04-288-83: TRANSFER OF FUNDS - GREENFIELD PLAZA TAX ASSESSMENT APPEAL

Motion by Councilman Frohlich supported by Councilman Disner: To approve transfer of funds in the amount of $2,500.00 from unforseen expense account in non-departmental expense to the appropriate account of the City Attorney for the Michigan Tax Tribunal as a deposit to cover the approximate cost of preparing the transcript in this matter; to grant authorization for filing appeal.

ROLL CALL VOTE: Yes, Demas, Disner, Frohlich, Rothstein, Naftaly
No, None

CM-04-289-83: RESOLUTION RE: SUPPORT OF HOUSE BILL 5685 - ANTI-OBSCENITY LEGISLATION - ADOPTED

Motion by Councilman Frohlich supported by Mayor Pro Tem Naftaly: To adopt the following Resolution in support of House Bill 5685 Anti-Obscenity Legislation:

WHEREAS, House Bill 5685 attempts to strengthen the anti-obscenity legislation currently on the books of Michigan, and

WHEREAS, this legislation attempts to better define the definition of obscenity in accordance with the United States Supreme Court ruling, thereby removing the objections of some Michigan courts that have ruled the current State law is too vague, and

WHEREAS, this legislation would provide for stiffer penalties for violators, and

WHEREAS, a "nuisance" clause would be added which would allow for padlocking of a building, and

WHEREAS, this type of padlocking has been effective in closing bars and motels that encourage prostitution.

NOW, THEREFORE, BE IT RESOLVED, that the City of Oak Park supports House Bill 5685 with the deletion of Sections 8, 9, and 10.

BE IT FURTHER RESOLVED that copies of this Resolution be sent to State Senator Jack Faxon, Governor James J. Blanchard, the Michigan Municipal League, State Representative Joseph Forbes, and surrounding communities.

ROLL CALL VOTE: Yes, Frohlich, Rothstein, Naftaly, Demas
No, Disner

4-04-290-83: RESOLUTION RE: DISTRICT COURT 45-B - ADOPTED

Motion by Councilman Demas supported by Councilman Frohlich:
To adopt the following Resolution regarding District Court 45-B:

WHEREAS, the City of Oak Park has operated as the district control unit for the 45-B District Court since January 1, 1975 pursuant to the provisions of Act No. 154 of the Public Acts of 1968, which provides that in district courts of the third class, the district control unit is responsible for maintaining, financing and operating the district court within its political subdivision, and

WHEREAS, pursuant thereto, the 45-B District Court serves the political subdivisions of the City of Oak Park, City of Huntington Woods, City of Pleasant Ridge, and Township of Royal Oak, and

WHEREAS, since January 1, 1975 the City of Oak Park, as the district control unit for the 45-B District Court, has borne the total expense of operating said Court located within its municipal offices, and since 1975 the subsidy from the City of Oak Park General Operating Fund required to maintain the operations of said Court has grown from Fifteen Thousand Sixty-Three Dollars ($15,063) to an estimated subsidy of Two Hundred Forty-Nine Thousand One Hundred Fourteen Dollars ($249,114) in fiscal year 1983-84, and

WHEREAS, the revenues of the City of Oak Park are at their maximum under the limitations contained in the City Charter, and the City is faced with growing pressures on its budget by increased costs and expenses which are being incurred in spite of personnel reductions and cutbacks in City Services to its residents, and

WHEREAS, Section 8104 of Act No. 154 provides in pertinent part:

"(2) Except as otherwise provided in this act, a district control unit shall be responsible for maintaining, financing, and operating the court only within its political subdivision. In districts of the 3rd class, a political subdivision shall not be responsible for the expenses of maintaining, financing, or operating the district court, traffic bureau (office) or small claims division incurred in any other political subdivision except as provided by Section 8621 and other provisions of this act.

4-04-290-83: (Continued)

(3) One or more district control units within any district may agree among themselves to share any or all of the expenses of maintaining, financing, or operating the district court. To become effective, such agreements must be approved by resolution adopted by the governing body of the respective political subdivisions entering into the agreement, and upon approval such agreements shall become effective and binding in accordance with, to the extent of and for such periods stated in that agreement.

(4) The district control unit shall supply such law books and legal reference resources as it deems necessary. No subsidy from state funds shall be required to stock any district court created by this act with law books or other legal reference works."

and

WHEREAS, the City of Oak Park has been subsidizing the City of Huntington Woods, City of Pleasant Ridge and Township of Royal Oak by providing district court services in the City of Oak Park, and

WHEREAS, the City of Oak Park has determined that it is no longer economically able to fund all of the operations of the 45-B District Court solely within the boundaries of the political subdivision of Oak Park, and

WHEREAS, the increase in the number of civil jury trials required to be disposed of by the 45-B District Court, due to remands of such cases from the Oakland County Circuit Court, has added a tremendous burden to the already overcrowded docket of the 45-B District Court, and

WHEREAS, the facilities for the operation of the 45-B District Court located within the political subdivision of the City of Oak Park are woefully inadequate to handle the operations of said Court, as concluded by the Study of Court Facilities conducted by the University of Michigan, under the auspices of the State Bar of Michigan, and

WHEREAS, due to the inadequate facilities and inability of the City of Oak Park to adequately fund the operations of the 45-B District Court, the citizens who reside within the boundaries of the 45-B District Court are unjustly burdened because of delays in disposition of their cases, and the ability of the District Court Judges to dispose of all matters required to come before them is severely impeded thereby, and

I-04-290-83: (Continued)

WHEREAS, Section 8261 of Public Act 154 provides:

"Court facilities shall be provided at those places where the court sits. In districts of the first and second class they shall be provided by the county and in districts of the third class they shall be provided by such political subdivision where the court sits."

and

WHEREAS, the Judges of the 45-B District Court have expressed to the City of Oak Park their inability to properly dispose of cases on their docket due to the inadequacy of facilities located within the City of Oak Park municipal offices and the low level of funding available from the City of Oak Park, and have expressed their desire and intent to have the 45-B District Court sit in other political subdivisions within the 45-B District Court boundaries, unless adequate facilities are provided within the political subdivision of the City of Oak Park, and

WHEREAS, the City Council of the City of Oak Park deems the inadequacy of court facilities and overloaded docket to be an emergency situation requiring prompt relief from all sources available,

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS;

1. That the City of Huntington Woods, City of Pleasant Ridge and Township of Royal Oak each are hereby requested, pursuant to Section 8261 of Public Act 154, to provide court facilities within each of their political subdivisions, and to provide for the maintenance, financing and operation of the 45-B District Court within their political subdivisions as required by Section 8104 of Public Act 154.

2. That in the alternative, the City of Huntington Woods, City of Pleasant Ridge and Township of Royal Oak are hereby requested to enter into an agreement with the City of Oak Park to share all of the expenses of maintaining, financing and operating the 45-B District Court at a location within the boundaries of the political subdivision of the City of Oak Park.

4-04-290-83: (Continued)

3. That the Michigan legislature is hereby urged to enact emergency legislation to appropriate the necessary funds to relieve the City of Oak Park from its burden of subsidizing the operations of the 45-B District Court, and to amend Act 154 to provide for an annual subsidy to the district control units charged with the responsibility of maintaining, financing and operating third class district courts.

4. That the Honorable Governor of the State of Michigan and the Michigan Supreme Court be requested to join the City of Oak Park in urging the Michigan legislature to appropriate sufficient emergency funds for the purposes aforesaid.

5. That State Representative Joseph Forbes be requested to seek from the Attorney General of the State of Michigan an opinion as to whether the provisions for financing district courts throughout the State of Michigan are violative of the equal protection provisions of the Michigan Constitution, inasmuch as they inequitably burden taxpayers within different political subdivisions by requiring those within third class district courts to fund through their tax dollars the operations of both first and second class district courts, as well as third class district courts, while residents of first and second class district courts are not equally burdened.

BE IT FURTHER RESOLVED that copies of this Resolution be sent to State Senator Jack Faxon, State Representative Joseph Forbes, Governor James J. Blanchard, Michigan Supreme Court Justice G. Mennen Williams, the City of Huntington Woods, City of Pleasant Ridge, and Township of Royal Oak, and District Court 45-B Judges Marvin F. Frankel and Benjamin F. Friedman.

ROLL CALL VOTE: Yes, Frohlich, Rothstein, Naftaly, Demas, Disner
No, None

-04-291-83: CITY ATTORNEY - EXECUTIVE (CLOSED) SESSION

Motion by Mayor Pro Tem Naftaly supported by Councilman Frohlich: To meet with Assistant City Attorney Goodman in executive (closed) session to discuss pending legislation following the adjournment of this Regular Council Meeting of April 5, 1983.

ROLL CALL VOTE: Yes, Rothstein, Naftaly, Demas, Disner, Frohlich
No, None

M-04-292-83: CITY ATTORNEY'S REPORTS

Motion by Mayor Pro Tem Naftaly supported by Councilman Disner:
To receive the following reports of the City Attorney:

a. City of Oak Park versus Studio 8 Theatre, Inc.

b. NIMLO FUTA Trust Fund

c. Greenfield Plaza Tax Assessment Appeal

d. Anti-Obscenity Legislation

e. Resolution, Re: District Court 45-B

VOTE: Yes, (5) No, None

M-04-293-83: RESOLUTION RE: PROPOSED REVISED FEE SCHEDULE FOR REGISTRATION, LICENSING, PERMITS AND PLAN EXAMINATION - ADOPTED

Motion by Councilman Disner supported by Councilman Demas:
To adopt the following Resolution regarding revised fee schedule for registration, licensing, permits and plan examination:

WHEREAS, the Department of Community Development has studied fees for building activities in area cities and the State of Michigan, and

WHEREAS, the current fees for building activities were approved in February, 1978; and

WHEREAS, the proposed fees more nearly reflect the cost of providing the various services; and

WHEREAS, the City Manager has reviewed the proposed fees and recommends their adoption by the City Council;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Oak Park, Michigan to adopt the proposed fees for building activities by reference (as herein contained).

ROLL CALL VOTE: Yes, Naftaly, Demas, Disner, Frohlich, Rothstein
No, None

I-04-294-83: SPECIAL BUDGET STUDY SESSIONS - ADOPTED

Motion by Councilman Frohlich supported by Councilman Disner: To adopt the following schedule of City Council Special Budget Study Sessions:

Tuesday, April 12, 1983	7:30 P.M.
Thursday, April 14, 1983	7:30 P.M.
Tuesday, April 19, 1983	7:30 P.M.
Thursday, April 21, 1983	7:30 P.M.
Monday, April 25, 1983	7:30 P.M.
Tuesday, April 26, 1983	7:30 P.M.
Wednesday, April 27, 1983	7:30 P.M.

VOTE: Yes, (5) No, None

-04-295-83: AUTHORIZATION TO ADVERTISE FOR BIDS - LEAF VACUUM

Motion by Councilman Demas supported by Councilman Disner: To authorize the Director of Public Works, Henry Lybeck, to advertise for bids for one (1) new 1983 trailer mounted leaf loading machine.

VOTE: Yes, (5) No, None

-04-296-83: TENTATIVE CONSTRUCTION SCHEDULE - BARRIER FREE DESIGN MODIFICATIONS AT EXISTING MUNICIPAL BUILDINGS

Motion by Councilman Demas supported by Councilman Disner: To receive tentative construction schedule of barrier free design modifications at existing municipal buildings from Donald J. Schelble, James Schelble Zaccagni Galayda, Inc. transmitted by City Manager, Aaron Marsh.

VOTE: Yes, (5) No, None

-04-297-83: SPORTS COMMISSION - COMPOSITION AND MEMBERSHIP

Motion by Councilman Frohlich supported by Councilman Disner: To receive report of City Manager, Aaron Marsh, regarding the composition and membership of the Sports Commission.

VOTE: Yes, (5) No, None

-04-298-83: CABLE ACCESS AGREEMENT

Motion by Councilman Disner supported by Councilman Demas:
To approve the execution of Cable Access Agreement between City of Oak Park and Continental Cablevision granting permission for Continental Cablevision to extend cable television wiring to all of the buildings of the City of Oak Park as well as to the school buildings of the School Districts of Ferndale, Berkley, and the Oak Park School Districts; to authorize appropriate officials to execute Agreement in behalf of the City of Oak Park.

ROLL CALL VOTE: Yes, Demas, Disner, Frohlich, Rothstein, Naftaly
No, None

-04-299-83: COOPERATIVE FIRE EQUIPMENT PURCHASING

Motion by Councilman Demas supported by Councilman Disner:
To authorize City of Oak Park to act as a representative for fire suppression agencies in Oakland County belonging to the Oakland County Fire Chiefs Association relative to cooperative fire equipment purchasing.

VOTE: Yes, (5) No, None

-04-300-83: RECYCLING CENTER - REVENUES

Motion by Mayor Pro Tem Naftaly supported by Councilman Disner:
To receive report of Director of Public Works, Henry Lybeck, regarding the revenue collection from Royal Oak Wastepaper and Metal (ROWM) Recycling Center.

VOTE: Yes, (5) No, None

04-301-83: RECONSIDER ACTION OF APPLICATION FOR SDD LICENSE - WIDAD JEAN TOMA, 21641 COOLIDGE - CITY MANAGER

Motion by Councilman Demas supported by Councilman Disner:
To rescind Motion of Special Council Meeting of March 31, 1983 with regard to Widad Jean Toma, 21641 Coolidge; City Manager, Aaron Marsh to notify Mr. Toma and the Liquor Control Commission that the City of Oak Park has no objection to Mr. Toma's individual application but rather to the number of SDD licenses being issued, Mr. Toma's application denied on the basis of distance from another established SDD location.

VOTE: Yes, (5) No, None

SECOND CALL TO AUDIENCE:

Mayor Rothstein announced that this was the time for the Second Call to Audience and invited those persons who had matters regarding the City of Oak Park to speak at this time.

Herman Fox, 23055 Church, encouraged the Resolution regarding District Court 45-8, and also questioned whether there has been an increase in the number of break-ins in the City of Oak Park.

Major Dennis Balou, Public Safety Department, responded to Mr. Fox that there has not be an increase in the number of break-ins and offered to meet with Mr. Fox to discuss the matter.

There being no further persons who wished to be heard, the Second Call to Audience was concluded by Mayor Rothstein.

CM-04-302-83: RESOLUTION RE: SUPPORT OF HOUSE BILL 1930 - ADOPTED

Motion by Councilman Disner supported by Councilman Demas:
To adopt the following Resolution in support of House Bill 1930:

WHEREAS, the program popularly called general revenue sharing was amended and extended through September 30, 1983, by the State and Local Fiscal Assistance Amendments of 1980 (P.L. 96-604); and

WHEREAS, while the Act continues to provide for payments to local governments on an entitlement basis at an annual level of $4.6 billion, new conditions were added regarding the payment of a State Share, and in FY81, there was no provision for a State Share. In fiscal years 1982 and 1983, the State share is subject to annual appropriations action by Congress, and in addition, payment of the State share is limited to the amount of categorical grant assistance that a State declines to receive or returns to the Federal Government; and

WHEREAS, in fact, no funds were requested for a State share for either 1982 or 1983, effectively eliminating State governments from participating in the program for those years, and

WHEREAS, the 98th Congress will be faced with the question of extending the general revenue sharing program past its termination date, altering the program, or allowing the program to expire, and

CM-04-302-83: (Continued)

WHEREAS, House Bill 1930, introduced March 3, 1983 and referred to Government Operations Committee, reauthorizes the general revenue sharing program for five (5) years through FY88, restores the State share on an entitlement basis at $2.65 billion level annually, increases the local share to $5.3 billion from $4.6 billion annually, and total annual authorization would be $7.98 billion.

NOW, THEREFORE, BE IT RESOLVED, that the Council of the City of Oak Park supports House Bill 1930 and urges our Representatives to lend backing to this Bill so vital to municipalities.

BE IT FURTHER RESOLVED, that copies of this Resolution be forwarded to U. S. Representative Sander Levin, U. S. Senator Carl Levin, State Representative Joseph Forbes, State Senator Jack Faxon, Representatives sponsoring the Bill, and to surrounding communities.

ROLL CALL VOTE: Yes, Disner, Frohlich, Rothstein, Naftaly, Demas
No, None

Councilman Disner wished everyone happy holidays.

Councilman Frohlich congratulated the Oak Park Red Skins Basketball team.

CM-04-303-83: RESOLUTION RE: OAK PARK RED SKINS BASKETBALL TEAM - ADOPTED

Motion by Councilman Frohlich supported by Mayor Pro Tem Naftaly: To adopt a Congratulatory Resolution for the Oak Park Red Skins Basketball Team; Resolution to be drafted at a later date.

VOTE: (5) No, None

Mayor Pro Tem Naftaly expressed condolence to Mr. Steve Woodberg, Director of Parks and Recreation, on the death of his mother.

Mayor Rothstein congratulated Mr. Mel Newman on the birth of his son.

MEETING ADJOURNED: 9:40 P.M.

Sandra K, Gadd, Deputy City Clerk

Charlotte M. Rothstein, Mayor

EXHIBIT 4

2000 WL 33522374
Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Court of Appeals of Michigan.

BURTCHVILLE TOWNSHIP, Plaintiff/Counter Defendant/Appellee,
v.
Noel BUCKNER, d/b/a Indian Trail North, Defendant-Appellant,
and
FORT GRATIOT TOWNSHIP, Defendant,
and
ST. CLAIR COUNTY, Defendant/Counter Plaintiff.

No. 209178.
|
March 10, 2000.

Before: WHITE, P.J., and HOOD and JANSEN, JJ.

Opinion

PER CURIAM.

*1 Defendant Noel Buckner, doing business as Indian Trail North, appeals as of right from the trial court's judgment in favor of plaintiff. The judgment, following a bench trial, required defendant to disconnect from its water supply arrangement with Fort Gratiot Township and connect to plaintiff's water supply system at defendant's cost. The practical implication of requiring Indian Trial to connect to the township's water system is a cost of between $600,000 and $800,000 to the residents of Indian Trail. We reverse.

Indian Trail North is a manufactured housing community located in Burtchville Township that was developed by Noel Buckner. Initially, Indian Trail was supplied water from wells. By 1980, the amount of water from the wells was insufficient to meet the needs of the community. Burtchville Township, however, did not have a water system in place at that time to meet the needs of the community. Consequently, Indian Trail entered into negotiations with neighboring Fort Gratiot Township, Burtchville Township, and St. Clair County so that Indian Trail could obtain water from Fort Gratiot Township. St. Clair County created Fort Gratiot water district I-extended, which was a new water district which included service to Indian Trail. Fort Gratiot Township and Indian Trail then entered into a fifteen-year water transmission agreement on February 20, 1980 for Fort Gratiot Township to provide water to Indian Trail. Further, the agreement required Noel Buckner to construct and install a water transmission main and water meter at his own expense. On June 20, 1980, Burtchville Township passed a resolution granting permission to the St. Clair County Department of Public Works, as the supplier of Fort Gratiot Township's water system, to supply water to Indian Trail.

In 1994, St. Clair County passed several resolutions which recommended the establishment of St. Clair County Water Supply System No. IX-Burtchville Township. However, because the water transmission agreement between Indian Trail and Fort Gratiot Township expired on February 20, 1995, those two parties entered into a new fifteen-year water transmission agreement on May 17, 1995. In December 1995, Indian Trail filed a petition with the Michigan Tax Tribunal challenging its inclusion in the special assessment district. Burtchville Township assessed an amount of $598,775, representing a special assessment of $34,400 and an indirect connection fee of $564,375.[1]

On August 20, 1996, Burtchville Township passed a resolution withdrawing its consent of allowing Indian Trail to receive water from Fort Gratiot Township. In another resolution dated September 17, 1997, Burtchville Township again withdrew its consent of allowing Indian Trail to receive water from Fort Gratiot Township. In the meantime, on January 14, 1997, Burtchville Township filed a complaint for declaratory judgment seeking to compel Indian Trail to cease using Fort Gratiot Township's water supply system and to use its water supply system once that system became fully operational.

*2 Following a bench trial, the trial court issued its opinion on December 15, 1997. The trial court found initially that Burtchville Township and Indian Trail entered into a binding contractual agreement in 1980, relying on the June 12, 1980 resolution, and an indemnity agreement signed the same day as constituting the contract. The trial court went on to conclude that this contract was ambiguous and used parol evidence to interpret the parties' agreement. Taking all of this evidence, the trial court ruled that the contract required Indian Trail to tap into Burtchville Township's water supply system upon its completion. Alternatively, the trial court further found that Burtchville Township was statutorily authorized under M.C.L. § 123.739; MSA

5.570(9) to withdraw its initial consent to allow St. Clair County and Fort Gratiot Township to supply Indian Trail with water and that this statute required St. Clair County to discontinue supplying water to Indian Trail.

Defendant Noel Buckner first argues that plaintiff was not entitled to a declaratory judgment based on an alleged contract because such a contract was not alleged in plaintiff's pleadings. We need not address the propriety of whether an alleged contract was properly pleaded in plaintiff's complaint because we find that the trial court erred in finding that there was a contract between plaintiff and defendant.

The trial court first found that there was a contract between plaintiff and defendant which required defendant to disconnect from Fort Gratiot Township's water supply system and connect to plaintiff's water supply system. However, there is no "contract" here. Rather, there is a resolution, adopted by Burtchville Township, and an indemnity agreement. The June 12, 1980 resolution granted permission to defendant to construct and install, at defendant's expense, a water main under Metcalf Road and granted permission to the St. Clair County Department of Public Works to supply water to the residents of Indian Trail. The resolution further states in pertinent part:

> 3. The permissions granted are without prejudice to the right of the Township of Burtchville to cause the said Indian Trail North Mobile Home Park to be included in any water supply district that may be hereafter established in the Township of Burtchville and without obligation to allow any credit for expenditures made by any person or entity pursuant to such permissions.

The indemnity agreement, dated June 12, 1980 and signed by Noel Buckner, states:

> In consideration of the Township of Burtchville, St. Clair County, Michigan granting permission for the construction of a water line on Metcalf Road within the limits of the Township of Burtchville to serve the Indian Trail North Mobile Home Park, the undersigned hereby covenants and agrees to indemnify, protect and hold harmless the said Township of Burtchville and its officers and agents from all claims, action and demands which may be asserted against it or them arising out of the granting of such permission or the construction, operation and maintenance of the said water line for 6 months from today.

*3 The resolution and indemnity agreement, even if taken together, do not create a contract between plaintiff and defendant. These documents are what they purport to be and no more. Further, both the resolution and indemnity agreement are clear and unambiguous. The indemnity agreement says nothing about requiring Indian Trail to disconnect from Fort Gratiot Township's water supply system to connect to Burtchville Township's water supply system. Moreover, the language in the resolution only states that Burtchville Township was reserving the right to "cause" Indian Trail to be *included in any water supply district* that may later be established in Burtchville Township. This does not translate to requiring Indian Trail to connect to Burtchville Township's water supply system.[2] If Burtchville Township wanted to require Indian Trail to connect to its own water supply system at some point in the future, it should have explicitly stated so in the resolution. However, the resolution only states that Burtchville Township could require Indian Trail to be included in any water supply district and this is a material difference from requiring Indian Trail to connect to Burtchville Township's water supply system at Indian Trail's expense.

It cannot really be contended that the resolution, adopted by plaintiff, constitutes a contract.[3] Contracts are created by parties and require mutual assent on all essential terms. *Kamalnath v. Mercy Memorial Hosp Corp,* 194 Mich.App 543, 548-549; 487 NW2d 499 (1992). The resolution does not contain the essential elements of a contract: offer, acceptance, and consideration. Thus, it is not appropriate to apply contract principles to the resolution and the trial court should not have considered parol evidence. Our Supreme Court has stated:

When the law requires municipal bodies to keep records of their official action in the legislative business conducted at their meetings, the whole policy of the law would be defeated in they could rest partly in writing and partly in parol, and the true official history of their acts would perish with the living witnesses, or fluctuate with their conflicting memories. No authority was found, and we think none ought to be, which would permit official records to be received as either partial or uncertain memorials. That which is not established by the written records, fairly construed, cannot be shown to vary them.

They are intended to serve as perpetual evidence, and no unwritten proofs can have this permanence. [*Ferrario v. Escanaba Bd of Ed,* 426 Mich. 353, 371; 395 NW2d 195 (1986); *Tavener v Elk Rapids Rural Agricultural School Dist,* 341 Mich. 244, 251-252; 67 NW2d 136 (1954); *Alcona Co v. Alcona Probate Judge,* 311 Mich. 131, 142; 18 NW2d 399 (1945); *Derosia v. Loree,* 158 Mich. 64, 73; 122 NW 357 (1909); *Stevenson v. Bay City,* 26 Mich. 44, 45 (1872)].
St. Clair County was required to obtain Burtchville Township's consent before supplying water to Indian Trail and the township provided that consent through a resolution. Moreover, as has been stated, we do not find the resolution or indemnity agreement to be ambiguous. Thus, it is not proper to consider parol evidence in this case where the resolution speaks for itself.

*4 Accordingly, the trial court erred in finding that there was any contract between plaintiff and defendant requiring plaintiff to disconnect from Fort Gratiot Township's water supply system and requiring it to connect to Burtchville Township's water supply system because the resolution and indemnity agreement do not create any contract so requiring.

Next, we find that the trial court erred in relying on certain statutes to require Indian Trail to disconnect from Fort Gratiot Township's water supply system and connect to Burtchville Township's water supply district. The trial court relied on M.C.L. § 123.739; MSA 5.570(9), which provides in relevant part: "[n]o county shall have the power to furnish water service, sewage disposal service or refuse service to the individual users within any municipality without its consent." Although this statute clearly requires the consent of a township before the township's residents can be supplied water from another county, the statute says nothing about withdrawing that consent and certainly does not compel a finding that defendant is required to connect to plaintiff's water supply system.

Accordingly, we reverse the trial court's order requiring Indian Trail to disconnect from the Fort Gratiot Township water supply district and connect to Burtchville Township's water supply district at Indian Trail's expense in the absence of any contractual or statutory authority to do so.

Reversed.

HOOD, J. (dissenting).

I respectfully dissent from the majority's conclusion that a contractual agreement was not reached between the parties.

In the present case, defendant was unable to provide a sufficient water supply to the residents of its mobile home park from wells. In order to remedy the problem, Noel Buckner and his attorney, Milton Bush, Jr., negotiated with plaintiff's representatives. While an agreement was not executed between plaintiff and defendant, plaintiff's board executed a resolution which authorized defendant to obtain water from a neighboring source. However, plaintiff asserted that the authorization was temporary. That is, defendant agreed to connect to the water system of plaintiff upon its construction. The resolution does not unambiguously state that defendant must connect to plaintiff's system upon its completion, but rather, provides that plaintiff has the right to "cause" defendant to be included in any water supply district established by plaintiff. In *Alcona County v. Freer,* 311 Mich. 131, 142; 18 NW2d 399 (1945), the Supreme Court held that municipalities must keep records of their official action and the policy of the law would be defeated by allowing officials to rely on parol evidence. However, there are exceptions to the general rule. Parol evidence may be considered in disputes involving municipalities to aid the record of official action where the same is ambiguous or where entries have been omitted. *North Star Twp v. Cowdry,* 212 Mich. 7, 15; 179 NW 259 (1920). The ambiguity in the language of the resolution required the consideration of parol evidence. *Id.* Parol evidence is permitted when the document purporting to express the parties' intent is incomplete. *In re Skotzke Estate,* 216 Mich.App 247, 252; 548 NW2d 695 (1996). The testimony of township officials does not contradict the writing, but explains the intent of the parties where the terms of the resolution are ambiguous. *UAW-GM Human Resource Center v KSL Recreation Corp,* 228 Mich.App 486, 492; 579 NW2d 411 (1998). Accordingly, I would hold that the trial court did not err in its admission and reliance upon parol evidence.

*5 Defendant also argued that even if parol evidence was considered, the testimony of Loyall Watson, John Perry, and Noel Buckner and documentary evidence executed in order for defendant to obtain a water supply failed to establish an "agreement." I disagree. Loyall Watson served as plaintiff's legal counsel at the time of the negotiations and subsequent enactment of the resolution which allowed defendant to obtain water from an outside source. Watson specifically testified that the parties did

not intend that defendant would be permitted to maintain a connection to Fort Gratiot Township once plaintiff had an operational water supply system. While defendant contends that Watson testified that he had "no independent memory of this at all," it appears that defendant has taken this statement out of context. Review of the deposition testimony reveals that Watson was referring to his recollection of who drafted two unexecuted resolutions in 1980, and not the parties' transaction as a whole.

Furthermore, defendant ignores the testimony of James Brown, which was relied upon by the trial court in concluding that defendant was compelled to tap into plaintiff's water system upon its completion. Brown, plaintiff's township supervisor in 1980, testified that the plain language of the resolution as well as his understanding of the parties' negotiations required that defendant "hook up" to plaintiff's water system once it became operational. The trial court found that this testimony was credible. This Court gives special deference to the trial court's findings where they are based on the credibility of witnesses. *In re Pott,* 234 Mich.App 369, 377; 593 NW2d 685 (1999).

Defendant contends that Buckner testified that an agreement was never reached which would have required the mobile home park to join any water system created by plaintiff and that the trial court "did not make a finding that Buckner was not credible." While there was no express statement in the opinion addressing Buckner's credibility, by rejecting Buckner's version of events, essentially, the trial court concluded that he was not credible. Furthermore, at trial, Buckner was asked if Brown was a liar because of his testimony that Buckner had agreed to join plaintiff's water system upon completion. Buckner responded that Brown was a good man and a deal "may" have been reached conditioned upon the price of connection. Furthermore, at the hearing regarding defendant's motion for a stay pending appeal, the trial court indicated that defendant had agreed to join plaintiff's water system and could no longer *avoid* the cost of the "tap-in" fee. While review of a declaratory judgment is de novo, the trial court's factual findings will not be reversed unless they are clearly erroneous. *Auto-Owners Ins v. Harvey,* 219 Mich.App 466, 469; 556 NW2d 517 (1996). The trial court's factual findings were premised upon the credibility of the witnesses, and I cannot conclude that the factual findings were clearly erroneous.

***6** While the majority concludes that the practical implications of requiring defendant to connect to plaintiff's water system is a cost of between $600,000 and $800,000, the final accounting has yet to be determined. In addition to this litigation, proceedings were filed before the Tax Tribunal. In an order denying plaintiff's motion for summary disposition, the Tax Tribunal took exclusive jurisdiction of the issue of the special assessment for water services. In that order, the Tax Tribunal noted that the apportioned amount of $598,775 to defendant consisted of $34,400 for the special assessment and $564,375 for the "tap-in" charge. The Tax Tribunal also found that the "tap-in" fee was within its exclusive jurisdiction because it was an exercise of plaintiff's power to apportion special assessment costs. At oral argument, the parties represented that the Tax Tribunal proceeding was held in abeyance pending a decision from this Court. Accordingly, it appears that while the parties have obtained a final judgment regarding the merits of any agreement to join in plaintiff's water system, the costs and propriety of joining remains outstanding. That is, at oral argument, defendant represented that if it was not included within plaintiff's water system, it would have to explore other options, including the digging of wells, in order to supply its residents with water. If the Tax Tribunal ruled in favor of defendant's challenge to the special assessment, arguably it could be cost beneficial to join plaintiff's water system as opposed to relying on wells.[1]

Furthermore, I note that while defendant's disconnection from Fort Gratiot's water supply appears to be mandated by statute, any compulsion to join in plaintiff's water system has not been adequately addressed by the parties. MCL 324.4703; MSA 13A.4703 provides that two or more municipalities, as defined by M.C.L. § 324.4701; MSA 13A.4701 to include counties and townships, may request that a water supply district be organized to function in a particular area. MCL 324.4708; MSA 13A.4708 sets forth the powers of a water district and grants water districts the broad authority to construct and operate water supply systems. Janet Kitamura of St. Clair County Road Commission testified that water districts were created by the county. She testified that in 1980, defendant was made a part of water district I extended. As a result of the creation of water district IX, which would serve plaintiff, district I extended would cease to exist. Accordingly, it appears that, contractual agreements aside, defendant was required to disconnect from Fort Gratiot's system and be *included* in the water district covering plaintiff's region. The parties failed to explore whether "inclusion" involves compelled participation in a water district. MCL 324.3104; MSA 13A.3104 provides that the Department of Environmental Quality (DEQ), M.C.L. § 324.3101; MSA 13A.3101, is to negotiate and cooperate with other governmental units regarding water quality control planning, development, and management.

Whether this broad degree of authority encompasses an order of mandatory inclusion in a water district has never been litigated. However, in light of the DEQ's regulation of water, it appears that the parties should have determined whether that regulation has any bearing on defendant's connection to any water system or the digging of wells.

*7 I would affirm.

Footnotes

1 Interestingly, Burtchville Township asserted in the Tax Tribunal that the indirect connection fee was a *voluntary fee* paid by those residents who wished to connect to the township's water system and was not a special assessment.

2 We note that the trial court acknowledged in its opinion that the resolution does not require Indian trail to disconnect from Fort Gratiot Township's water supply system.

3 The trial court acknowledged this too in its opinion when it stated that Indian Trail was not a party to the resolution and thus could not be contractually bound by the resolution itself.

1 This is particularly important because defendant's prior reliance on wells failed to satisfy the water needs of its mobile home residents.

All Citations

Not Reported in N.W.2d, 2000 WL 33522374

End of Document

2009 WL 323401
Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

UNPUBLISHED
Court of Appeals of Michigan.

CHARTER TOWNSHIP OF YPSILANTI, Township of Salem and Charter Township of Augusta, Plainti ffs/Cross-Defendants-Appellants/Cross-Appellees
,
and
Lincoln Consolidated Schools And John B. Collins, Plaintiffs,
v.
WASHTENAW COUNTY, Washtenaw County Board of Commissioners, Washtenaw County Administrator, Jeff Irwin, Leah Gunn, Robert Brackenbury, Barbara Bergman, Martha Kern, Mark Ouimet, Conan Smith And Stephen Solowczuk, Defen dants/Counter-Plaintiffs-Appellees/Cross-Appella nts.
Charter Township of Ypsilanti, Township of Salem and Charter Township of Augusta, Plaintiffs/Counter–Defendants–Appellants,
and
Lincoln Consolidated Schools And John B. Collins, Plaintiffs,
v.
Washtenaw County, Washtenaw County Board of Commissioners, Washtenaw County Administrator, Jeff Irwin, Leah Gunn, Robert Brackenbury, Barbara Bergman, Martha Kern, Mark Ouimet, Conan Smith And Stephen Solowczuk, Defendants/Counter Plaintiffs–Appellees.

Docket Nos. 281498, 282354.
|
Feb. 10, 2009.

West KeySummary

1 **Counties**
Validity and Sufficiency
Public Contracts
Manner of making contract

A county sheriff's department did not breach an alleged contract with a township because the three documents relied on by the township failed to satisfy the elements necessary to establish a valid contract. The two parties had engaged in a series of consecutive contracts for police services. A review of the documents, whether read individually or jointly, clearly evidenced merely an intention and framework for negotiation and not a "meeting of the minds" on all essential terms. These documents, coupled with a long history of formal, executed contracts was contrary to the township's position that the sheriffs department had to maintain subsidization for contracted police services at previous levels and limited annual cost increases to six percent until 2010.

Cases that cite this headnote

Washtenaw Circuit Court; LC No. 06–000059–CK.

Before: TALBOT, P.J., and BANDSTRA and GLEICHER, JJ.

Opinion

PER CURIAM.

*1 In Docket No. 281498, plaintiffs appeal the trial court's grant of summary disposition in favor of defendants on plaintiffs' contract and promissory estoppel claims. Plaintiffs also challenge the trial court's dismissal of their claims pertaining to defendants' constitutional duty to provide specified police services and the costs charged for these services by defendants. They also seek reassignment to an alternative judge on remand. On cross-appeal, defendants challenge the trial court's finding of a violation of the Open Meetings Act and the dismissal of their quantum meruit claim. In Docket No. 282354, plaintiffs appeal the denial of their request for attorney fees and costs for defendants' violation of the Open Meetings Act. We affirm in part and reverse in part.

I. History

Plaintiffs, Charter Township of Ypsilanti, Salem Township and Charter Township of Augusta (hereinafter "Townships"), have engaged in a series of consecutive contracts for police services through the Washtenaw County Sheriffs Department, with defendants, Washtenaw County and the Washtenaw County Board of Commissioners (hereinafter "defendants"). The Townships have elected to contract for these services within their jurisdictions rather than establish their own police departments. The contracts typically covered two-year time periods and initiated, in the case of the Charter Township of Ypsilanti, in 1965. The issues involved in this appeal concern the contracting period for the years 2006 to 2009.

In order to place the current dispute in perspective, it is helpful to review the most recent contractual history between the parties and how changes in computation of fees for police services have evolved. In 1999, defendants retained the services of Northwestern University Traffic Institute (NUTI) to conduct a study to determine the proper level of police services and evaluate the cost methodology being used to charge for contracted deputies. Following the receipt of this study, defendants formed ad hoc committees to review police services. The committees sought input through public hearings and from County departments in conducting their evaluation. Using the results and recommendations obtained from NUTI and their own investigations, defendants passed a resolution on June 7, 2000, adopting a new methodology for contracting of police services using police service units (PSUs).[1] Attached to this resolution was a document entitled: "Washtenaw County Police Services Summary of approach to contracting for Police Services," which defined the composition of a PSU and provided an overview of current costs for police services, defendants' financial contribution or subsidization for contracted services, the calculated reimbursement rate for one deputy in 2000 with a phased-in approach for implementation of the new cost methodology beginning in 2002. Notably, even with the adoption of the PSU cost methodology, the Townships were not responsible for the full cost of the contracted police services. Defendants continued to subsidize costs using .5 mills from the General Fund and retained responsibility for the payment of overtime and overhead. In separate contracts covering 2002 through 2003, the Townships contracted for a total of 47 PSUs with defendants.[2]

*2 Because defendants' actual costs exceeded what had been anticipated using this methodology, in late 2002 a Police Services Committee was implemented to review the contracting methodology for use in 2004. In May 2003, the County Administrator, Robert Guenzel, prepared and forwarded a memorandum to defendants' Ways and Means Committee pertaining to a new methodology for use in 2004/2005 contracting. Using this newly developed methodology, defendants would continue to subsidize through the millage level previously utilized, but the Townships would begin to assume some of the burden for overtime charges and the cost of a PSU would be subject to yearly increases of six percent. On June 4, 2003, defendants passed "A Resolution Modifying the Current Methodology for Contracting Police Services" to coincide with the 2004 budget year. Subsequently, 24–month contracts were successfully negotiated between the Townships and defendants for police services for 2004 through 2005.

In 2005, defendants sought a millage increase, in part, to fund an expansion of the jail to address overcrowding, which was rejected by voters. Based on defendants' determination regarding the need to proceed with plans pertaining to the expansion of the physical capacity of the jail, defendants ascertained that funding for this project could be obtained by reducing the level of subsidies being provided for contracted police services. Beginning with the 2006 police service contracts with the Townships, defendants sought four-year contract terms. Defendants proposed the continuation of the .5 mill subsidy through 2006, but beginning in 2007 the Townships would be required to pay a flat fee of $10,000 for each PSU for overtime costs. Defendants would retain responsibility for any additional overtime costs incurred. In 2008, the PSU concept of pricing would be discontinued and, instead, the Townships would be charged the cost of a basic deputy and any personnel, services or equipment required by the deputy.[3]

When presented with the 2006–2009 contracts, the Townships signed the documents but crossed out the provisions for the 2008–2009 period. The Townships reportedly rejected the four-year provisions because the full economic terms for the 2008–2009 portion of the contract remained undetermined. Because the striking of this portion of the contract was construed as a unilateral rejection of the entire contract, defendants attempted to continue to provide the Townships with ongoing police services, through adoption of the January 4, 2006 resolution for a four-month "bridge" contract, beginning January 1, 2006 and continuing through April 30, 2006. This resolution required the Townships to pay $100 an hour for each PSU, which defendants asserted reflected their approximate cost to provide police services. Plaintiffs rejected this offer and filed the underlying lawsuit.

At the outset of the proceedings in the lower court, the Townships sought a preliminary injunction to prevent the discontinuation of police services and halt any potential layoffs of deputies by defendants. On February 3, 2006, the trial court entered a stipulated order requiring the parties to maintain the status quo pending the filing and hearing of motions for summary disposition. On April 13, 2006, the trial court granted partial summary disposition in favor of defendants on plaintiffs' contract and statutory duty claims, but permitted plaintiffs to file an amended complaint. The trial court vacated the status quo order on April 25, 2006. Ultimately, following additional motions for summary disposition, the trial court dismissed all of plaintiffs' remaining claims, with the exception of their assertion of a violation of the Open Meetings Act, MCL 15.261, *et seq.* Despite finding a violation of a notice provision of the Open Meetings Act, the trial court denied plaintiffs' request for attorney fees and costs for this violation. The trial court also rejected defendants' request for reimbursement for interim police services in quantum meruit for the period of January 1, 2006 to December 6, 2006 when a formal contract for police services did not exist between the parties and which also encompassed the time when the status quo order was in effect. Notably, while this litigation remained pending, the parties did sign, on December 6, 2006, contracts for police services that were effective from the date of execution through 2009. In a stipulated order dated December 6, 2006, which incorporated these executed contracts, the parties specifically reserved their rights to pursue all claims pending in this action.

II. Standard of Review

*3 We review de novo a trial court's ruling on motions for summary disposition. *Armstrong v. Ypsilanti Charter Twp.*, 248 Mich.App. 573, 582, 640 N.W.2d 321 (2002). Specifically, a motion for summary disposition brought pursuant to MCR 2.116(C)(8) "tests the legal sufficiency of a claim by the pleadings alone and all factual allegations contained in the complaint must be accepted as true as well as any reasonable inferences or conclusions that can be drawn from the facts." *Id.* at 583–584, 640 N.W.2d 321. With reference to a motion brought pursuant to MCR 2.116(C)(10), our Supreme Court has ruled that a trial court may grant summary disposition "if the affidavits or other documentary evidence show that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law." *Clerc v. Chippewa Co. War Mem. Hosp.*, 267 Mich.App. 597, 601, 705 N.W.2d 703 (2005) (citation omitted). Questions of statutory interpretation comprise questions of law that this Court also reviews de novo. *Armstrong, supra* at 582, 640 N.W.2d 321. We review a trial court's findings of fact for clear error and its conclusions of law de novo. *Alan Custom Homes, Inc. v. Krol*, 256 Mich.App. 505, 512, 667 N.W.2d 379 (2003) (citations omitted). In determining whether the facts presented to a trial court resulted in the formation of a contract comprises an issue of law that we review de novo. *Bracco v. Michigan Technological Univ.*, 231 Mich.App. 578, 585, 588 N.W.2d 467 (1998). Finally, this Court reviews de novo a trial court's dispositional ruling pertaining to an equitable matter. *Blackhawk Dev. Corp. v. Village of Dexter*, 473 Mich. 33, 40, 700 N.W.2d 364 (2005). "The trial court's findings of fact in an equity action can be set aside only if they are clearly erroneous." *Attorney Gen. v. Lake States Wood Preserving, Inc.*, 199 Mich.App. 149, 155, 501 N.W.2d 213 (1993).

III. Analysis

A. Breach of Contract

The Townships contend the trial court erred in granting summary disposition on their contract claim. In the lower court, the Townships asserted the existence of a "Master Contract" comprised of three documents: (1) the Guenzel May 21, 2003 memorandum, (2) the Washtenaw County Police Services Summary of Approach to Contracting for Police Services developed in 2000, and (3) the June 4, 2003 Resolution adopted by defendants. The Townships argued that these documents comprised a valid and enforceable contract, which required defendants to maintain subsidization for contracted police services at previous levels and the limitation of annual increases in the costs for a PSU to six percent until 2010.

Defendants denied the existence of a "Master Contract," asserting the documents relied on by the Townships merely provided the parameters for contract negotiations and failed to demonstrate any mutuality of agreement sufficient to comprise a valid contract. Defendants further argued that the purported "Master Contract" violated the statute of frauds due to the absence of the formality of authorized signatures and could not be enforced based on the failure of the express condition precedent requiring stable levels of revenue sharing. Citing to the January 1, 2004, contract defendants contend that the integration clause contained in that document would nullify any purported antecedent agreement reflected by a "Master

Contract."

*4 For a valid contract to be formed, the following elements are essential: (a) the participation of parties competent to contract, (b) a proper subject matter, (c) legal consideration, (d) mutuality of obligation, and (e) mutuality of agreement. *Hess v. Cannon Twp.*, 265 Mich.App. 582, 592, 696 N.W.2d 742 (2005) (citation omitted). The term mutuality of agreement is understood to refer to a meeting of the minds on all of a contract's material terms. *Kamalnath v. Mercy Hosp.*, 194 Mich.App. 543, 548–549, 487 N.W.2d 499 (1992). "A meeting of the minds is judged by an objective standard, looking to the express words of the parties and their visible acts, not their subjective states of mind." *Id.*

The trial court correctly determined that the three documents relied on by the Townships fail to satisfy the elements necessary to establish a valid contract. "A mere expression of intention does not make a binding contract." *Kamalnath, supra* at 549, 487 N.W.2d 499. Further, "Mere discussions and negotiations cannot be a substitute for the formal requirements of a contract." *Thomas v. Leja*, 187 Mich.App. 418, 422, 465 N.W.2d 58 (1991). A review of the documents comprising the purported "Master Contract," whether read individually or jointly, clearly evidence merely an intention and framework for negotiation and not a "meeting of the minds" on all essential terms. Even the most formal of the three documents, the "Resolution Modifying the Current Methodology for Contracting Police Services," only indicates authorization for the County Administrator "to negotiate contracts within the parameters of the attached methodology beginning for the year 2004 and provision for those contracts be included in the 2004/2005 budget." Based on this very specific limitation, it is disingenuous for the Townships to contend that these documents comprise an enforceable contract extending into the year 2009. In addition, the attachment of sample blank contracts to the alleged "Master Contract" belies any contention by the Townships that the resolution and the other documents they rely on were intended to comprise the final agreement between the parties. This, coupled with the long history of formal, executed contracts is contrary to the Townships' position.

Even if a "Master Contract" were found to exist, it was supplanted by the 2004 contract, which contained the following integration clause:

> Article XIV—Extent of Contract. This contract represents the entire agreement between the parties and supercedes all prior representations, negotiations, or agreements whether written or oral.

In accordance with general contract principles, "parties are bound by the contract because they have chosen to be so bound." *Archambo v. Lawyers Title Ins. Corp.*, 466 Mich. 402, 414, 646 N.W.2d 170 (2002). It is well recognized,

> [W]here the later contract contains an integration clause, it cannot be said that the later contract does not supersede the earlier contract on the basis that that is not what the parties intended. Obviously, in such a situation, the integration clause provides clear evidence to the contrary, i.e., that the parties *did* intend the later contract to supersede the earlier contract .... and thus provides dispositive evidence with regard to which contract is controlling. [*Id.* at 414, 646 N.W.2d 170 n16 (emphasis in original) .]

*5 As noted by the trial court, given the clear and unambiguous language of the integration clause in the 2004 contract, "even if a Master Contract was formed, the integration clause expressly nullifies it."

The Townships assert that the 2004 contract was consistent with, and in fulfillment of, the "Master Contract" and, therefore, the integration clause did not make the Townships' reliance on the "Master Contact" unreasonable. This argument is not viable given our determination that a "Master Contract" is nonexistent. In what seems a rather desperate attempt to support their contract claim, the Townships contend that the integration clause is "ambiguous" and that a question of fact exists regarding its "extent and scope." This argument is merely one more pellet in the shotgun approach to this litigation as the Townships fail to provide any discussion or law in support of this conclusion. Accordingly, this argument is waived for purposes of appeal. See *Wilson v. Taylor*, 457 Mich. 232, 243, 577 N.W.2d 100 (1998).

In response to defendants' assertion that the proposed "Master Contract" violated the statute of frauds, the Townships, citing *46th Circuit Court v. Crawford Co.*, 266 Mich.App. 150, 702 N.W.2d 588 (2005), rev'd on other grounds 476 Mich. 131, 719 N.W.2d 553 (2006), amended 476 Mich. 1201 (2006), contend that the signature of the Deputy Clerk on the June 4, 2003

Resolution suffices to meet any signatory requirement. In *Crawford,* this Court determined that a formal resolution approved by a county board constituted an agreement because "A county board speaks only through its official minutes and resolutions and their import may not be altered or supplemented by parole evidence regarding the intention of the individual members ." *Id.* at 161, 702 N.W.2d 588. However, the Townships' attempt to use this ruling is misplaced, as *Crawford* is factually distinguishable. At issue in Crawford was a retirement benefit package, which was being developed for employees of the district court. All of the essential terms of that agreement were contained in the subject resolution, thereby constituting a valid contract, when approved by the county board. However, in the circumstances of this case the documents relied on by plaintiffs fail to comprise a valid contract. As such, the sufficiency of defendants' approval of the 2003 resolution for meeting statute of fraud requirements is irrelevant and rendered superfluous by our determination that a contract does not exist.

B. Promissory Estoppel

Alternatively, the Townships contend entitlement to appellate relief based on the equitable doctrine of estoppel. In support of their claim of promissory estoppel, the Townships argue that the documents comprising the "Master Contract" contained explicit promises regarding the use of a specific funding mechanism and the ongoing subsidization of costs in contracts for police services. The Townships refer to the projections incorporated in these documents regarding future costs and assert they detrimentally relied on these representations in seeking millages and foregoing the development of their own police departments. Defendants assert that the alleged promises relied on by the Townships are insufficient for the imposition of estoppel and, because express contracts existed regarding the same subject matter, estoppel is precluded. Finally, defendants contend it was objectively unreasonable for the Townships to rely on the alleged statements given the prolonged history of formal contracting and the uncertain nature of the underlying financial projections. The trial court granted summary disposition based on the absence of a "clear and definite" promise by defendants and found that any purported reliance by the Townships, given the uncertainty of defendants' financial projections and the clear indication that "all costs and funding levels would be subjected to biennial review" was unreasonable.[4]

*6 Promissory estoppel is comprised of the following elements: "(a) a promise, (2) that the promisor should reasonably have expected to induce action of a definite and substantial character on the part of the promisee and (3) that in fact produced reliance or forbearance of that nature in circumstances such that the promise must be enforced if injustice is to be avoided." *Novak v. Nationwide Ins. Co.,* 235 Mich.App. 675, 686–687, 599 N.W.2d 546 (1999). "In determining whether a requisite promise existed, we are to objectively examine the words and actions surrounding the transaction in question as well as the nature of the relationship between the parties and the circumstances surrounding their actions." *Id.* at 687, 599 N.W.2d 546. Further, this Court must "exercise caution in evaluating an estoppel claim and should apply the doctrine only where the facts are unquestionable and the wrong to be prevented undoubted." *Id.*

Contrary to the Townships' assertions, the referenced documents do not contain explicit promises. "To support a claim of estoppel, a promise must be definite and clear." *Schmidt v. Bretzlaff,* 208 Mich.App. 376, 379, 528 N.W.2d 760 (1995) (citation omitted). "[R]eliance is reasonable only if it is induced by an actual promise." *Ypsilanti Twp. v. Gen. Motors Corp.,* 201 Mich.App. 128, 134, 506 N.W.2d 556(1993) (citation omitted). The Guenzel memorandum refers only to "assumptions" in trying to "determine the appropriate level of service and cost sharing." The delineated costs were clearly designated to be "projections" and indicated the potential for future "modifications." This memorandum indicated that the proposed methodology was dependent on the "long-term fiscal stability" of the County and "on the continuation of State Revenue Sharing at current levels." The June 4, 2003 Resolution clearly provided that the new contracting methodology was intended to "coincide with the County's budget process," which spans specified intervals. The new methodology was to begin on January 1, 2004, and merely authorized the negotiation of contracts initiating that year. There was no indication that the Resolution was a promise to continue beyond the approaching budget year.

The Townships assert defendants used the term "commitment" and that such language comprises a binding promise. However, the Townships ignore the entirety of the statement they cite, which indicated that the "Board of Commissioners *wishes* to make a long term commitment to fund County police services...." (Emphasis added.) "[A] promise must be distinguished from a statement of opinion, a prediction of future events, or a party's will, wish, or desire for something to happen." *First Security Savings Bank v. Aitken,* 226 Mich.App. 291, 313, 573 N.W.2d 307 (1997), overruled on other grounds 460 Mich. 446, 597 N.W.2d 28 (1999).

Although the Townships repeatedly assert the existence of promises by defendants, their pleadings are inadequate in identifying, by clear language rather than inference and implication, any definitive declaration by defendants sufficient for the imposition of estoppel.

*7 This Court would further note that, in their complaint, the Townships name as individual defendants eight of the eleven members of the Washtenaw County Board of Commissioners, but allegations pertaining only to Kern and Brackenbury are specifically contained within the pleadings. The complaint fails to contain any allegations regarding six of the eight named members and only infers that statements made by Kern and Brakenbury to a local newspaper comprised promises binding on defendants. In implying these representations are sufficient for the imposition of estoppel, the Townships ask this Court to make too broad of an inferential leap. The allegations pertaining to these individuals are insufficient to meet the requirements for estoppel. As such, the pleadings are inadequate on their face to support claims against any of these individual defendants.

C. Constitutional Duty to Provide Police Services and Cost Allocations

The Townships allege the trial court erred in granting summary disposition on their claim regarding defendants' constitutional obligation to provide police services. The Townships challenge the trial court's determination that the provision of a "road patrol" is not a mandatory service and that defendants did not act in an arbitrary and capricious manner in calculating the price charged for police services. Specifically, the Townships take issue with the trial court's use and application of *Brownstown Twp. v. Co. of Wayne,* 68 Mich.App. 244, 242 N.W.2d 538 (1976), asserting circumstances pertaining to population growth and needs of townships have changed significantly since *Brownstown* was decided, making the decision factually inapplicable to this case and outdated. Consequently, the Townships assert that the provision of a road patrol should now be construed as a mandatory service. The Townships contend that this Court should remand the issue to sufficiently develop a record to ascertain what police services are mandated by law and to permit them the opportunity to demonstrate that a stricter duty should be imposed given the prolonged history of dependence by the Townships on defendants' provision of deputies and the absence of alternative options to secure police coverage.

At the outset it is necessary to address the Townships' allegations that the trial court was not properly responsive to its complaint by failing to delineate what police services are legally or constitutionally mandated. A reading of the Townships' complaint only asserts that defendants are required, based on prior practice and historical dependency, to continue to provide all police services previously provided regardless of the existence of a contract. Contrary to the Townships statement of their issue on appeal, the trial court thoroughly addressed the presented issue.

A sheriff's duties are statutory in nature. MCL 45.407 states:

> It is hereby provided that this act shall be so construed as to require the sheriff, under-sheriff and deputy sheriffs to perform all reasonable services within the jurisdiction of their offices for which the county may be liable and to serve and execute all civil writs and processes that may be reasonably served and executed by said officers under salary.

*8 The Townships contend that the phrase "to perform all reasonable services" necessarily equates to all of the duties performed pursuant to the prior contracts between the parties, including a routine road patrol. Following the logic of the Townships' arguments, it is difficult to understand why contractual agreements were ever sought since all such services are construed as being mandatory.

In *Brownstown,* while recognizing the importance of the availability of law enforcement services "for the protection of the safety and welfare of its citizens," this Court read MCL 45.407 and construed "the provision 'reasonable service' to mean the sheriff must perform the duties of the office of sheriff as recognized at common law as well as those statutory duties which do not destroy the sheriff's power to perform the duties of the office at common law." *Brownstown, supra* at 248, 242 N.W.2d 538. Specifically, the common law duties of a sheriff were determined to include:

> [S]heriffs may execute all lawful orders and process of the circuit courts of this state. MCLA 600.582; MSA 27a.582. Sheriffs have charge and custody of the county jail and its prisoners. MCLA 51.75; MSA 5.868. Likewise, statutory law impliedly

> recognizes the duty of the sheriff to serve process in civil or criminal cases, preserve the peace, and apprehend persons committing a felony or a breach of the peace, because the sheriff may recruit suitable aid in performing these functions. MCLA 600.584; MSA 27A.584. Se also MCLA 287.6; MSA 12.375 (enforcement of quarantine orders of animals); MCLA 752.527; MSA 18.1221 (recovery of drowned bodies). [*Id.* at 249, 242 N.W.2d 538.]

However, as repeatedly found by this Court there exists "no statutory requirement that the sheriff provide a road patrol." *Id.* (See also, *Cahalan v. Wayne Co. Bd. of Comm'rs*, 93 Mich.App. 114, 123, 286 N.W.2d 62 (1979), reaffirming the decision in *Brownstown* refusing "to order the Wayne County Board of Commissioners to allocate funds to operate a road patrol, because there was no statutory or common law duty requiring the sheriff to perform such a service.")

Although this Court did construe the existence of a "stricter duty" in the absence of alternative police services, the Townships disingenuously suggest this implies the provision of road patrol services. Rather, this Court specifically determined:

> [N]either the common law nor Michigan statutory authority impose a duty on the sheriff to supply a full-time road patrol on all county roads and highways. A stricter duty is imposed upon the sheriff to maintain law and order in those areas of the county not adequate policed by local authorities. This *does not mean that the sheriff must regularly patrol those areas.* All that is minimally required is that the sheriff exercise reasonable diligence to (1) keep abreast of those areas inadequately policed, which may require limited vigilance, (2) monitor criminal activity or unusual conditions in the county, and (3) respond professionally to calls for assistance from the citizenry. [*Brownstown, supra* at 251, 242 N.W.2d 538 (emphasis added).]

*9 In a subsequent opinion, acknowledging the holding in *Brownstown,* this Court observed:

> No public official can provide all the services that he would like to provide, and it is for him to use his judgment as to how he will make his money spread. If he is politically astute, he can perhaps make sufficient political capital of his inability to render services to create pressure upon the legislative branch to increase his appropriation. But no court can very well take a hand in that game. Nor can the court even suggest, much less dictate, in what way an official shall shift his funds in order to comply with a duty which the court has found the law imposes upon him. [*Wayne Co. Sheriff v. Wayne Co. Bd. of Comm'rs,* 148 Mich.App. 702, 708, 385 N.W.2d 267 (1986) (internal citations and quotation marks omitted).]

Consequently, the trial court properly followed the precedent established by this Court in determining the absence of a common law or statutory basis to mandate the provision of road patrol services. See *City of Taylor v. Detroit Edison,* 475 Mich. 109, 136, 715 N.W.2d 28 n9; 475 Mich. 109, 715 N.W.2d 28 (2006).

A similar conclusion is supported in an opinion issued by the Michigan Attorney General. "Although Attorney General opinions are not binding on this Court, they can be persuasive authority." *Lysogorski v. Bridgeport Charter Twp.,* 256 Mich.App. 297, 301, 662 N.W.2d 108 (2003). In OAG, 2976, No 4966, p 369 (April 6, 1976), addressing the requirement to provide police protection to villages "absent a specified contractual obligation," the Attorney General opined:

> It follows that for purposes of law enforcement and police protection, a sheriff is obligated to enforce county ordinances and state laws throughout the county, including those areas designated as villages. This obligation embraces police protection services supplied by the county sheriff and is limited only to the sheriff's duties to "matters for which the county may be liable."
>
> However, the distribution of deputy sheriffs throughout the county remains an administrative function within the discretion of the sheriff. A village, which desires

> additional police protection, has the option of entering into a contract with the county where by the sheriff would be obligated to provision additional manpower to the village ... or by the establishment of a village police force. [*Id.* at 370, 662 N.W.2d 108.]

As recognized by the trial court, the Separation of Powers doctrine[5] is implicated in these determinations. "Under established separation of powers doctrine, legislative power must be insulated from judicial interference. This Court has consistently held that in disputes such as the present one, the judiciary will not interfere with discretionary actions of a legislative body such as defendant board of commissioners." *Wayne Co Sheriff, supra* at 704. Although the trial court was within the purview of its authority to interpret the statutes pertaining to the mandatory functions of the sheriff in providing police protection to the Townships, the trial court correctly recognized the limitations imposed on its ability to dictate to defendants what constitutes "serviceable" levels of policing and restricted itself to a determination regarding whether the method used to ascertain the amounts assessed was arbitrary and capricious.

*10 As previously discussed by this Court:

> The separation of powers doctrine mandates the preservation of the legislative, executive, and judicial branches of government as entities distinct from one another. The power to appropriate money is exclusively legislative in character. This Court has consistently refrained from interfering with a legislative body's exercise of discretion in appropriating funds. In order to warrant judicial intrusion, the legislative action must be "so capricious or arbitrary as to evidence a total failure to exercise discretion." [*Police Officers Assoc. of Michigan v. Oakland Co.*, 135 Mich.App. 424, 430, 354 N.W.2d 367 (1984) (internal citations omitted).]

The result urged by the Townships is misplaced, as it would require the judiciary to micro-manage the legislative duties and responsibilities of defendants.

The Townships further obfuscate the issue by attempting to integrate a variety of arguments, without actually presenting any substantive legal support for their position other than to assert that defendants and the trial court erred in their interpretation and the application of cited cases and statutes. This is insufficient, particularly in seeking appellate review. To the extent the Townships contend that defendants were arbitrary and capricious in determining the rates to be charged for non-mandatory police services, a review of the lower court record leads this Court to affirm the trial court's October 4, 2007, opinion:

> [Defendants] have considered every aspect of the situation. They have not proceeded pell-mell to determine the PSU rate, and they certainly have not "picked a figure out of the air". To the contrary they have attempted to determine how many deputies are needed for mandatory police services and backed that number out of the equation of the total number of deputies in eventually settling on the monetary rate per PSU. One must keep in mind that additional services are still provided that fall outside of this rate. [(Internal citations omitted.)]

While the Townships may dispute the methodologies employed in making this cost determination, they fail to demonstrate that the manner in which defendants proceeded was not thorough and based on a considered analysis.

In support of their contention that the cost methodology used was arbitrary and capricious, the Townships cite to comments by two members of the Washtenaw County Board of Commissioners, who opined that the setting of a differential rate for the Townships from those local governments that had signed contracts with defendants appeared punitive and retaliatory. However, the cited statements, without more, are insufficient because "individual board members' viewpoints are not relevant since the board exercises its power as a collective entity and not as individuals." *Wayne Co Sheriff, supra* at 705 (citation omitted).

D. Open Meetings Act Violation and Attorney Fees

On cross-appeal, defendants contend the trial court erred in finding the form of a meeting notice used by defendants violated the OMA because it failed to designate that a quorum of the Board of Commissioners would be present at the Leadership Committee meeting when the Sheriff's request for independent legal representation was denied. Defendants argue that posting of the notice for the Leadership Committee meeting was sufficient to indicate that a quorum of the Board would be present. Further, defendants assert that the Board's subsequent re-enactment of their decision, pursuant to MCL 15.270(5), precluded the trial court from granting any form of declaratory relief on the Townships' OMA claim. In response, the Townships contend the trial court erred in not awarding them attorney fees and costs based on the language of the statute. As a result, the Townships seek an award of actual attorney fees and costs in the amount of $313,396.01.

***11** Although the Townships' allegations pertaining to alleged violations of the OMA changed during the course of the litigation, for purposes of this appeal only their assertion that consideration of the Sheriff's request for independent legal representation was not properly noticed is before this Court. The Sheriff submitted a request for independent legal representation, which was placed on the January 19, 2006 meeting agenda for the Wayne County Board of Commissioners Leadership Committee. The Leadership Committee rejected the Sheriff's request for legal representation, and minutes of that meeting were developed. There appears to be no legitimate dispute that notice of this meeting was posted and that it was held in a room accessible to the public. Rather, the alleged violation of the OMA centers on the failure of the notice to indicate that a sufficient number of commissioners would be present at that meeting to constitute a quorum.[6] Defendants subsequently disbanded the Leadership Committee and, in September, the Ways and Means Committee of the Board of Commissioners re-enacted the decision to deny the Sheriff's request for legal fees and retention of outside counsel, pursuant to MCL 15.270(5).

On summary disposition, the trial court, relying on this Court's ruling in *Nicholas v. Meridian Charter Twp. Bd.*, 239 Mich.App. 525, 528, 609 N.W.2d 574 (2000), found the meeting notice to be inadequate.[7] The trial court determined that the presence of a quorum of the Board at the Leadership Committee meeting necessitated that the public be informed, "the business to be undertaken would actually be considered by the township board rather than the particular committee actually specified on the notice." *Id.* at 532, 609 N.W.2d 574. The trial court rejected the Townships' additional requests for an injunction against future violations of the OMA and to invalidate the decisions of the Leadership Committee. The trial court determined that, since the Leadership Committee had already been voluntarily disbanded, there existed no basis for the granting of an injunction. Further, because the prior actions of the Leadership Committee were re-enacted by the WCBC in accordance with MCL 15.270(5), the trial court ruled, "there are no grounds for an invalidation of the official action of the WCBC." Based on its finding of a violation of the OMA, the trial court permitted the matter to proceed for a determination of attorney fees and costs, which would be recoverable pursuant to either MCL 15.273(2) and/or MCL 15.271(4), finding that defendants were not "insulate [d]" against the imposition of sanctions for violation of the OMA.

Three sections of the OMA, MCL 15.261 *et seq.*, are relevant to this issue. First, MCL 15.270 provides in relevant part:

> (1) Decisions of a public body shall be presumed to have been adopted in compliance with the requirements of this act. The attorney general, the prosecuting attorney of the county in which the public body serves, or any person may commence a civil action in the circuit court to challenge the validity of a decision of a public body made in violation of this act.
>
> ***12** (2) A decision made by a public body may be invalidated if the public body has not complied with the requirements of section 3(1), (2), and (3), in making the decision or if failure to give notice in accordance with section 5 has interfered with substantial compliance with section 3(1), (2), and (3) and the court finds that the noncompliance or failure has impaired the rights of the public under this act.

This section of the OMA also contains the provision pertaining to re-enactment. In accordance with MCL 15.270:

> (5) In any case where an action has been initiated to invalidate a decision of a public body on the ground that it was not taken in conformity with the requirements of this act, the public body may, without being deemed to make any admission contrary to its interest, reenact the disputed decision in conformity with this act. A decision reenacted in this manner shall be effective from the date of reenactment and shall not be declared invalid by reason of a deficiency in the procedure used for its initial enactment.

Notably, this section does not provide for an award of costs and attorney fees. See *Leemreis v. Sherman Twp.*, 273 Mich.App. 691, 699, 731 N.W.2d 787 (2007).

In contrast, in MCL 15.271, "the Legislature provided a distinctly different cause of action against public bodies for noncompliance" with the OMA. *Leemreis, supra* at 699, 731 N.W.2d 787. MCL 15.271, states, in relevant part:

> (1) If a public body is not complying with this act, the attorney general, prosecuting attorney of the county in which the public body serves, or a person may commence a civil action to compel compliance or to enjoin

> further noncompliance with this act.

Significantly, MCL 15.271 permits the imposition of attorney fees and costs, stating:

> (4) If a public body is not complying with this act, and a person commences a civil action against the public body for injunctive relief to compel compliance or to enjoin further noncompliance with the act and succeeds in obtaining relief in the action, the person shall recover court costs and actual attorney fees for the action.

Finally, MCL 15.273 allows for a "different cause of action against a public official who intentionally violates the act." *Leemreis, supra* at 700, 731 N.W.2d 787. MCL 15.273(1), provides:

> A public official who intentionally violates this act shall be personally liable in a civil action for actual and exemplary damages of not more than $500.00 total, plus court costs and actual attorney fees to a person or group of persons bringing the action.

At the outset we note that although the Townships alleged, "Defendants collectively and individually have each intentionally violated the OMA," relief was only requested pursuant to MCL 15.271(4). Based on their own pleadings, and consistent with the trial court's failure to "make a specific finding that any public official or individual Commissioner of the WCBC had 'intentionally' violated the OMA," we will not consider the Townships request for attorney fees and costs pursuant to MCL 15.273(1). Further, because MCL 15.270 does not provide for costs and attorney fees for violation under this section of the OMA, we restrict our review of the Townships' claim to MCL 15.271(4).

***13** Three requirements exist to obtain an award of costs and attorney fees pursuant to MCL 15.271(4):

> (1) a public body must not be complying with the act, (2) a person must commence a civil action against the public body "for injunctive relief to compel compliance or to enjoin further noncompliance with the act," and (3) the person must succeed in "obtaining relief in the action." [*Leemreis, supra* at 704, 731 N.W.2d 787.]

Because the Townships did not meet the third criteria of successfully "obtaining relief in the action," the trial court was justified in denying an award of attorney fees. Even though the trial court determined that a "technical violation" occurred pertaining to "the adequacy of notice," an injunction was unnecessary because the Leadership Committee had been voluntarily disbanded precluding future repetition of the violation. Hence, as in *Leemreis,* "even if the trial court properly granted declaratory relief, it was not declaratory relief that was the 'equivalent' of an injunction or in lieu of an injunction." *Id.* at 707, 731 N.W.2d 787. In addition, the trial court did not invalidate the decision of the Leadership Committee due to re-enactment of the vote by the entire Board of Commissioners. Because the Townships "did not receive the invalidation it sought, it could not obtain attorney fees, regardless of whether the defendant, as a consequence of the action, reenacted the meeting in which the alleged violation occurred." *Id.* at 709, 731 N.W.2d 787.

Defendants contend it was improper for the trial court to even consider the issue of attorney fees because the reenactment of the decision rendered the issue moot, thereby depriving the trial court of jurisdiction. Pursuant to this Court's decision in *Leemreis:*

> The statute and caselaw are clear that once a decision is reenacted, it "shall not be declared invalid by reason of a deficiency in the procedure used for its initial enactment," MCL 15 .270(5), and it "stands untainted by procedural deficiency," *Manning v. City of East Tawas,* 234 Mich.App. 244, 252, 593 N.W.2d 649 (1999). If a plaintiff seeks invalidation and a subsequent reenactment precludes invalidation, there is no longer any actual controversy within the context of the case.... In the absence of an actual controversy, the trial court lacks subject-matter jurisdiction to enter a declaration judgment. *McGill v. Automobile Ass'n of Michigan,* 207 Mich.App. 402, 407, 526 N.W.2d 12 (1994). [*Id.* at 703, 526 N.W.2d 12.]

As a result, "[t]he trial court erred in considering this moot issue in the guise of granting declaratory relief and, because there was no longer any case in controversy, lacked subject-matter jurisdiction...." *Id.* Because the subsequent reenactment cured the defect, any issue pertaining to the existence of a violation of the act was rendered moot.

The trial court did conduct an evidentiary hearing pertaining to the Townships' request for attorney fees. However, the Townships' attorneys were unable to

demonstrate, with any degree of certainty, the time and costs expended in the pursuit of their claim for violation of the OMA. Specifically, as discussed by the trial court in its November 13, 2007 opinion:

> *14 [T]he Plaintiffs' attorneys testified truthfully but failed to clearly establish the "actual" attorney fees and costs attributable to the OMA claim. For example, Mr. Whitman frequently utilized qualifying terminology that "50 percentage-ish" of the claim fees were for the OMA claim. Mr. Matta also candidly admitted that it was difficult to distinguish certain fees given the nature of the multiple claims. It was logical for the witnesses to conclude that a significant portion of time was spent on the OMA claim since they were initially precluded from pursuing discovery on the other claims. To the extent this Court would need to speculate or rely upon conjecture in determining "actual" attorney fees and costs such a finding would be arbitrary.

It is incredible to this Court that the Townships could have expended sufficient time and effort in pursuing this one claim to justify their contention of entitlement to over $300,000 in attorney fees and costs, particularly given their inability to substantiate the primary claims underlying this cause of action.

E. Quantum Meruit

On cross-appeal, defendants assert the trial court erred in ruling their quantum meruit counterclaim had been rendered moot. Defendants contest the trial court's determination that the subsequent signing of the December 2006 contracts rendered the claim moot because the contracts were not retroactive and specifically reserved the right to pursue this claim. Surprisingly, the Townships concur that the trial court's determination that the issue was moot was in error. Rather, the Townships contend that defendants were not entitled to any relief in quantum meruit because there had been no demonstration of a benefit received due to the failure of the trial court to adequately distinguish between mandated and non-mandated police services. In effect, the Townships respond to this issue by arguing a different claim.

"[A] claim of quantum meruit is equitable in nature." *Morris Pumps v. Centerline Piping, Inc.*, 273 Mich.App. 187, 199, 729 N.W.2d 898 (2006). "The theory underlying quantum meruit recovery is that the law will imply a contract in order to prevent unjust enrichment when one party inequitably receives and retains a benefit from another." *Id.* at 194, 729 N.W.2d 898. To obtain a recovery based on a claim of quantum meruit both the "receipt of a benefit" and a resulting inequity "because of the retention of the benefit" must be established. *Id.* at 195, 729 N.W.2d 898.

Defendants filed a claim in quantum meruit for the difference between their requested rate of $77 for a PSU from the discounted rate of $53 paid for a PSU during the period spanning January 1, 2006 through December 6, 2006, when the parties did not have a formal contract and encompassing the period of time when the status quo order had been terminated by the trial court. Although other governmental units that entered into long-term contracts with defendants received the discounted rate of $53, defendants contend it would be inequitable to permit the Townships to receive the services at this same rate due to additional administrative costs incurred.

*15 It cannot be disputed that the Townships received a benefit by continuing to receive full police services at the discounted rate for the 11-month period spanning January 1, 2006 to December 6, 2006, without having committed to a contract during this protracted litigation. Further, the trial court made a factual determination that defendants were burdened by the Townships' receipt of this benefit and that the amount of $77 for a PSU was not arrived at in an arbitrary and capricious manner. Our review of the record leads us to conclude that these factual findings by the trial court do not give rise to a definite and firm conviction that mistakes were made. Thus, giving due deference to the trial court's factual determination regarding the prejudice to defendants as a result of the Townships' receipt of the discounted rate without the benefit of a formal contract, we are persuaded the trial court erred in failing to award defendants the differential cost of $24 for a PSU for the 11-month period on their quantum meruit claim. Therefore, we reverse the trial court's grant of summary disposition on defendants' quantum meruit claim and remand this issue to the trial court for calculation of an award.

F. Judicial Disqualification

The Townships, for the first time on appeal[1], seek disqualification of the assigned judge, asserting bias and that he improperly granted summary disposition pursuant to MCR 2.116(C)(8). Specifically, the Townships allege that Judge Costello "repeatedly decided issues of fact when no such findings were warranted." Despite the voluminous record available, the Townships cite only to the following portion of the trial court's November 13, 2007, ruling denying their request for attorney fees based on a violation of the OMA to support their contention of bias:

> To the understandable frustration and disappointment of the Plaintiffs however, this Court cannot find that it warrants the assessment of actual attorney fees and costs. Certainly the Plaintiffs' main objective was to derail the assessment for Police Service Units which translates into million [sic] of current and future dollars for the participating townships. The OMA claim was but one more attempt to accomplish this goal. A review of the court file and history of this case will revel [sic] the shifting and developing claims regarding the OMA claim by the Plaintiffs. Even if the OMA claim was maintained as a separate action this Court cannot find that the Plaintiffs received the "relief" they pursued under the statute.
>
> Although the above assertions provide the sum and substance of the Townships' proffered evidence of purported bias by the trial court judge from the lower court record, they contend in their appellate brief that it comprises "overwhelming evidence."

The Townships' request for disqualification of the trial judge lacks both a legal or factual basis. In accordance with *Cain v. Dep't of Corrections*, 451 Mich. 470, 512, 548 N.W.2d 210 (1996), "[I]n order for disqualification ... to be proper, the judge must have shown actual bias against a party or a party's attorney." In this instance, the Townships primarily assert the trial judge was biased based on his rulings in favor of defendants. Their pleadings are completely inadequate as "judicial rulings, in and of themselves, almost never constitute a valid basis for a motion alleging bias, unless the judicial opinion displays a 'deep-seated favoritism or antagonism that would make fair judgment impossible' and overcomes a heavy presumption of judicial impartiality." *Armstrong, supra* at 597, 640 N.W.2d 321 (internal citations omitted).

***16** Our review of the record and lower court rulings reveals the trial court's thorough and even-handed approach with both parties. The Townships conveniently ignore that the trial court permitted them to amend their complaint and did not limit or unduly restrict oral arguments on any issue. A review of the opinions issued by the judge demonstrates great attention to detail and an effort to accurately recount the arguments presented by both sides. Noteworthy is the fact that the Townships do not allege the trial court failed to correctly reiterate their arguments, did not understand their position or failed to provide a legal basis for its various rulings. On several occasions, the trial court expressed empathy for the Townships and provided them with opportunities to address issues or arguments raised by defendants by extending discovery and refusing to grant defendants' requests for summary disposition. "Repeated rulings against a litigant, even if erroneous, are not grounds for disqualification. The court must form an opinion as to the merits of the matters before it. This opinion, whether pro or con, cannot constitute bias or prejudice." *Armstrong, supra* at 597–598, 640 N.W.2d 321. Further, the trial court did not rule exclusively in favor of defendants as it sided with the Townships on the claimed violation of the OMA and dismissed the counterclaim raised by defendants for quantum meruit.

IV. Conclusions

We affirm in part and reverse in part and remand for further proceedings consistent with this opinion. Pursuant to MCR 7.219(A), for taxation of costs purposes, we find defendants to be the prevailing parties in this appeal. We do not retain jurisdiction.

All Citations

Not Reported in N.W.2d, 2009 WL 323401

Footnotes

1 Each PSU would be comprised of (a) a deputy, (b) supervision (sergeant, lieutenant, commander), (c) investigation support, (d) clerical support, (e) dispatch services, (f) transportation costs, and (g) non-personnel support costs.

2 Specifically, Ypsilanti Township contracted for 44 PSUs; Augusta Township contracted for two PSUs, and Salem Township contracted for one PSU.

3 Regardless of whether a jurisdiction contracted for police services, defendants would continue to provide "core services" (also referred to a "County-wide services") without charge.

4 We note that the trial court in its April 13, 2006, order and memorandum of law incorrectly refers to equitable rather than promissory estoppel, as pleaded by the Townships. Despite this error, we find no fault in the trial court's reasoning or ultimate decision on this issue.

5 US Const Arts I, II, III, § 1; Const 1963, art 3, § 2.

6 Following redistricting, the reduction of the number of Commissioners from 15 to 11 resulted in the six Board members on the Leadership Committee to constitute a quorum of the Board.

7 The trial court relied solely on the ruling of the *Nicholas* Court in making this determination and implied disagreement with that ruling when stating it did "not interpret the applicable statutes to provide for such notice."

8 We note that a motion for disqualification was filed by plaintiffs in the lower court premised on Judge Costello's voluntary disclosure that his daughter was in the process of interviewing for a summer clerkship with the Dykema Gossett law offices, located in Chicago, Illinois. Judge Costello denied plaintiffs' request for his recusal and our review of the lower court record reveals no attempt by plaintiffs to seek a de novo review of this ruling. Further, on appeal, plaintiffs fail to cite to any concerns pertaining to the lower court motion for disqualification and premise their argument before this Court on alleged bias demonstrated by his rulings being contrary to the strictures of MCR 2.116(C)(8).

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